



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

**PLEASE NOTE:** *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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**Des Moines, IA 50319**  
**Telephone: (515)281-6766**

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## Schedule for Rule Making 2006

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Dec. 30 '05	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
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Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
***May 17***	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '07
***June 28***	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sept. 13	Oct. 18	Jan. 15 '07
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '07
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '07
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '07
***Aug. 23***	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 12 '07
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 26 '07
Sept. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '07	Apr. 9 '07
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '07	Apr. 23 '07
Oct. 20	Nov. 8	Nov. 28	Dec. 13	***Dec. 13***	Jan. 3 '07	Feb. 7 '07	May 7 '07
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***Nov. 15***	Dec. 6	Dec. 26	Jan. 10 '07	Jan. 12 '07	Jan. 31 '07	Mar. 7 '07	June 4 '07
Dec. 1	Dec. 20	Jan. 9 '07	Jan. 24 '07	Jan. 26 '07	Feb. 14 '07	Mar. 21 '07	June 18 '07
***Dec. 13***	Jan. 3 '07	Jan. 23 '07	Feb. 7 '07	Feb. 9 '07	Feb. 28 '07	Apr. 4 '07	July 2 '07
***Dec. 27***	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
<b>19</b>	<b>Friday, February 24, 2006</b>	<b>March 15, 2006</b>
<b>20</b>	<b>Friday, March 10, 2006</b>	<b>March 29, 2006</b>
<b>21</b>	<b>Friday, March 24, 2006</b>	<b>April 12, 2006</b>

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

**\*\*\*Note change of filing deadline\*\*\***

## PUBLICATION PROCEDURES

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>DENTAL EXAMINERS BOARD[650]</b>		
Licensure by examination, 11.2, 11.5, 12.1 to 12.4 IAB 2/15/06 <b>ARC 4908B</b>	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	March 7, 2006 2 p.m.
CPR course with clinical component, 14.1(4), 14.3(4), 14.5(1), 25.2(10) IAB 2/15/06 <b>ARC 4907B</b>	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	March 7, 2006 2 p.m.
<b>ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]</b>		
Iowa community development block grant program, 23.4, 23.6(3) IAB 2/15/06 <b>ARC 4879B</b>	First Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	March 7, 2006 1:30 p.m.
<b>EMPOWERMENT BOARD, IOWA[349]</b>		
Community empowerment, amendments to ch 1 IAB 2/1/06 <b>ARC 4836B</b>	Room G14 State Capitol Des Moines, Iowa	February 23, 2006 9:30 a.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
Incorporation of Clean Air Interstate Rule, 20.1, 21.1(4), 22.120; ch 34 IAB 1/18/06 <b>ARC 4823B</b>	Gritter Room, Iowa Hall Kirkwood Community College Cedar Rapids, Iowa	February 21, 2006 1 p.m.
	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	February 22, 2006 1 p.m.
Incorporation of Clean Air Mercury Rule, 22.3(5), 23.1, 25.1 to 25.3; adopt ch 34 IAB 1/18/06 <b>ARC 4824B</b>	Gritter Room, Iowa Hall Kirkwood Community College Cedar Rapids, Iowa	February 21, 2006 1 p.m.
	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	February 22, 2006 1 p.m.
Construction permits for animal feeding operations, 65.5(3), 65.103(5) IAB 2/15/06 <b>ARC 4898B</b>	Public Library 46 First St. SW LeMars, Iowa	March 7, 2006 9 a.m.
	City Hall 410 N. Park Place Audubon, Iowa	March 7, 2006 7 p.m.
	Public Library 3520 86th St. Urbandale, Iowa	March 8, 2006 2 p.m.
	Marr Park 2943 Hwy. 92 Ainsworth, Iowa	March 9, 2006 7 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)**

	Library 1500 W. Bremer Ave. Waverly, Iowa	March 10, 2006 9 a.m.
Organic materials composting facilities, 105.1, 105.3, 105.5 to 105.8, 105.14 IAB 2/15/06 <b>ARC 4893B</b>	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	March 15, 2006 10 a.m. to 12 noon

**HUMAN SERVICES DEPARTMENT[441]**

Support enforcement services, 98.24(5), 98.43(2), 98.45, 98.47 IAB 2/15/06 <b>ARC 4900B</b>	Suite 400 501 Sycamore Waterloo, Iowa	March 15, 2006 9 to 10 a.m.
	CSRU Conference Room 3911 West Locust St. Davenport, Iowa	March 15, 2006 10 to 11 a.m.
	Third Floor DHS Conference Room 799 Main St. Dubuque, Iowa	March 15, 2006 10 to 11 a.m.
	Suite 225 520 Nebraska St. Sioux City, Iowa	March 15, 2006 10 to 11 a.m.
	Third Floor Conference Room 1901 Bell Ave. Des Moines, Iowa	March 16, 2006 9 to 10 a.m.
	Conference Room, Suite 32 300 West Broadway Council Bluffs, Iowa	March 16, 2006 10 to 11 a.m.
	Seventh Floor Conference Room 411 Third St. SE Cedar Rapids, Iowa	March 17, 2006 8 to 10 a.m.

**MEDICAL EXAMINERS BOARD[653]**

Licensee disciplinary proceedings, 2.14(4) IAB 2/15/06 <b>ARC 4861B</b>	Conference Room, Suite C 400 SW Eighth St. Des Moines, Iowa	March 7, 2006 4 p.m.
Mandatory reporting; discipline, rescind ch 12; adopt chs 22 to 26 IAB 2/15/06 <b>ARC 4871B</b>	Suite C 400 SW Eighth St. Des Moines, Iowa	March 7, 2006 2 p.m.
Supervision of pharmacists engaged in collaborative drug therapy management, 13.4, 13.5 IAB 2/15/06 <b>ARC 4872B</b>	Suite C 400 SW Eighth St. Des Moines, Iowa	March 8, 2006 3 p.m.

**PHARMACY EXAMINERS BOARD[657]**

Collaborative drug therapy management, 8.34 IAB 2/15/06 <b>ARC 4874B</b>	Suite C 400 SW Eighth St. Des Moines, Iowa	March 8, 2006 3 p.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Chiropractic physicians—competency examination, 40.1, 45.5 IAB 2/15/06 <b>ARC 4883B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	March 8, 2006 10:30 to 11 a.m.
Chiropractic physicians—UCCR committee, 43.3 IAB 2/15/06 <b>ARC 4885B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	March 8, 2006 10:30 to 11 a.m.
Chiropractic physicians—independent study continuing education hours, 44.3(2) IAB 2/15/06 <b>ARC 4886B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	March 8, 2006 10:30 to 11 a.m.
Nursing home administrators—competency examination, 140.1, 144.5 IAB 2/15/06 <b>ARC 4867B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	March 8, 2006 10 to 10:30 a.m.
Optometrists, 179.1, 183.5 IAB 2/1/06 <b>ARC 4851B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	February 21, 2006 10:30 to 11 a.m.
Podiatrists, 219.1, 224.5 IAB 2/1/06 <b>ARC 4854B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	March 8, 2006 9 to 9:30 a.m.
Respiratory care practitioners, 260.1 IAB 2/15/06 <b>ARC 4884B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 4, 2006 9 to 9:30 a.m.
Physician assistants, 325.1, 326.8(1), 329.3, 329.5 IAB 2/15/06 <b>ARC 4866B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	March 8, 2006 9:30 to 10 a.m.

**PUBLIC HEALTH DEPARTMENT[641]**

Private well sampling, reconstruction, and plugging—grants to counties, ch 24 IAB 2/1/06 <b>ARC 4843B</b>	Room 415 Lucas State Office Bldg. Des Moines, Iowa	February 21, 2006 10 a.m.
Radiation, amendments to chs 38 to 42, 45, 46 IAB 2/1/06 <b>ARC 4842B</b>	Conference Room 142 Lucas State Office Bldg. Des Moines, Iowa	February 28, 2006 8:30 a.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Fire marshal, amendments to ch 5 IAB 2/15/06 <b>ARC 4904B</b> (See also <b>ARC 4903B</b> herein)	Conference Room, Suite N 401 SW Seventh St. Des Moines, Iowa	March 24, 2006 9:30 a.m.
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**RACING AND GAMING COMMISSION[491]**

Updates to comply with uniform rules of racing and standards, amendments to chs 4, 9 to 12 IAB 2/15/06 <b>ARC 4873B</b>	Suite B 717 E. Court Des Moines, Iowa	March 7, 2006 9 a.m.
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**TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]**

Implementation of statutory changes, 7.1, 7.5, 12.5 IAB 2/15/06 <b>ARC 4877B</b>	Thompson Conference Room Building W-4, Camp Dodge Johnston, Iowa	March 7, 2006 1 p.m.
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**TRANSPORTATION DEPARTMENT[761]**

Secondary road fund distribution committee, ch 102 IAB 2/15/06 <b>ARC 4862B</b>	First Floor South Conference Room Administration Bldg. 800 Lincoln Way Ames, Iowa	March 9, 2006 10:30 a.m. (If requested)
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**CITATION of Administrative Rules**

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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## ARC 4892B

# AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 159.5(11), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 50, “Women, Infants, and Children/Farmers’ Market Nutrition Program and Senior Farmers’ Market Nutrition Program,” Iowa Administrative Code.

The purpose of this rule making is to make changes in rules governing administration of the WIC Farmers’ Market Nutrition Program and the Senior Farmers’ Market Nutrition Program in compliance with federal law and to clarify the provisions governing the farmers’ market nutrition programs.

Any interested person may make written suggestions or comments on the proposed amendments prior to 4:30 p.m. on March 7, 2006. Such written material should be directed to Mike Bevins, State Horticulturist, Bureau of Horticulture and Farmers’ Markets, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. Comments may also be submitted by fax to (515)281-4282 or by E-mail to [mike.bevins@idals.state.ia.us](mailto:mike.bevins@idals.state.ia.us).

No waiver provision is included in these rules; however, the Department has a general rule which allows for waivers in appropriate cases. The waiver rule applies to these rules.

These amendments are intended to implement Iowa Code chapter 159.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **21—50.3(159)** by amending the following definitions:

“Authorized CSA” means a community supported agriculture program that is authorized by the department for the exchange of FMNP/SNMNP SFMNP funds for eligible foods.

“Proxy” means an individual authorized by an eligible recipient to act on the recipient’s behalf, including application for, receipt of, or use of vouchers or acceptance of SFMNP foods provided through a CSA program as long as the benefits are ultimately received by the recipient. Minors shall not be used as proxies. *A proxy may act on behalf of more than one eligible recipient only if the proxy is directly related to the additional eligible recipients.*

ITEM 2. Amend subrule **50.8(2)**, paragraph “f,” as follows:

f. Department is notified if the farmers’ market/farmstand ceases changes the posted hours and days of operation prior to the end of the authorization period.

ITEM 3. Amend subrule 50.8(7) as follows:

**50.8(7)** An authorized farmers’ market must ensure that at least one certified vendor remains ~~on-site at the authorized farmers’ market~~ during the posted days and hours of market operation. Failure to comply will result in a warning citation from the department. Repeated noncompliance could result in the revocation of the farmers’ market authorization.

ITEM 4. Amend subrule 50.8(8) as follows:

**50.8(8)** A farmstand authorized to participate in the FMNP/SFMNP shall be operated from a permanent building that is primarily used for the sale of eligible foods, is not moveable and remains in the same location year-round. The building shall have at least a roof, sidewalls, and solid floor to protect produce and people. Wood post frame, stud frame, rigid-frame metal, and concrete block construction are suitable farmstand construction. *The building must be maintained in a manner consistent with standards generally accepted for this type of business.* Up to two moveable farmstands that do not meet the requirements of permanent farmstands may be authorized in cities and villages that are not located within ten miles of an authorized farmers’ market. If three or more applications for moveable farmstands within the same city or village are received by the department, the applicants shall be required to meet the authorization requirements of a farmers’ market. An authorized farmstand must be staffed during all hours of operation. Failure to comply will result in a warning citation from the department. Repeated noncompliance could result in the revocation of the farmstand authorization.

ITEM 5. Amend subrule 50.9(3), introductory paragraph, as follows:

**50.9(3)** The department does not limit the number of vendors who may become certified under FMNP/SFMNP. *The department issues a single certified vendor number for each separate and distinct agricultural operation.* A vendor certified to accept program vouchers may accept vouchers at any authorized market in the state upon approval by the department to participate in that particular market and acceptance by the particular market. A vendor who satisfies all the following criteria shall be certified to accept vouchers.

ITEM 6. Amend rule **21—50.10(159)**, numbered paragraph “3,” as follows:

3. Prominently displaying a certified vendor identification sign that is located on the customer traffic side of the stall *only at the location, hours, and days of an authorized farmers’ market/farmstand.* The certified vendor identification sign must be removed or covered when the eligible foods are sold out.

ITEM 7. Amend rule **21—50.10(159)**, numbered paragraph “20,” as follows:

20. Ensuring that all other persons who act on behalf of the certified vendor *at a farmers’ market/farmstand act solely on behalf of the certified vendor and understand and adhere to the procedures and regulations of the FMNP/SFMNP.*

ITEM 8. Amend rule **21—50.10(159)**, numbered paragraph “21,” as follows:

21. Coordinating with other certified vendors to ensure that at least one certified vendor remains ~~on-site at the authorized farmers’ market~~ during the posted hours and days of operation.

ITEM 9. Amend subrule **50.11(2)**, paragraph “a,” subparagraph (3), as follows:

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

(3) Coordinate with other certified vendors to ensure that at least one certified vendor remains on-site at the authorized farmers' market during the posted hours and days of operation.

**ARC 4908B****DENTAL EXAMINERS BOARD[650]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 11, "Licensure to Practice Dentistry or Dental Hygiene," and Chapter 12, "Dental and Dental Hygiene Examinations," Iowa Administrative Code.

The purpose of the amendments is to allow applicants for dental or dental hygiene licensure to complete the examination administered by the American Board of Dental Examiners, Inc. (ADEX) to qualify for dental or dental hygiene licensure by examination. Applicants for licensure by examination may also take either the Central Regional Dental Testing Service, Inc. (CRDTS) examination or the Western Regional Examining Board, Inc. (WREB) examination.

These amendments are subject to waiver or variance pursuant to Iowa Administrative Code 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendments on or before March 7, 2006. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to [Jennifer.Hart@iowa.gov](mailto:Jennifer.Hart@iowa.gov).

Also, there will be a public hearing on March 7, 2006, beginning at 2 p.m. in the Board Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the January 18, 2006, meeting of the Board of Dental Examiners. The Board of Dental Examiners ratified the recommendation of the Dental Hygiene Committee of the Board regarding the proposed changes for the dental hygiene examination for licensure.

These amendments are intended to implement Iowa Code chapters 17A, 147 and 153.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 11.2(2), paragraph "e," as follows:

e. Evidence of successful completion of the examination taken in the last five years, with resulting scores, adminis-

tered by the *American Board of Dental Examiners, Inc.*, the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc. (WREB). The WREB examination must also be taken after January 1, 2001.

ITEM 2. Amend subrule 11.5(2), paragraph "e," as follows:

e. Evidence of successful completion of the examination taken in the last five years, with resulting scores, administered by the *American Board of Dental Examiners, Inc.*, the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc., taken after January 1, 2001.

ITEM 3. Amend rule 650—12.1(147,153) as follows:

**650—12.1(147,153) Clinical examination procedure for dentistry.**

**12.1(1)** To meet the requirements for dental licensure by examination, applicants shall complete either the examination administered by the *American Board of Dental Examiners, Inc. (ADEX)*, the Central Regional Dental Testing Service, Inc. (CRDTS) examination, or the Western Regional Examining Board, Inc. (WREB) examination, if taken after January 1, 2001.

**12.1(2)** Examinees shall meet the requirements for testing and follow the procedures established by either the *American Board of Dental Examiners, Inc.*, the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc.

**12.1(3)** Prior to April 1, 1995, the examinee must attain an average grade of not less than 70 percent on each clinical portion of the examination and 70 percent on the written portion of the examination. Between April 1, 1995, and December 31, 2000, the examinee must attain an average grade of not less than 75 percent on each clinical portion of the examination and 75 percent on the written portion of the examination. Effective April 1, 1997, the written portion of Central Regional Dental Testing Service (CRDTS) was eliminated from the CRDTS examination. Effective January 1, 2001, the examinee must attain a comprehensive score that meets the standard for passing established by ADEX, CRDTS, or the Western Regional Examining Board, Inc. (WREB) WREB.

**12.1(4)** Each examinee shall be required to perform such clinical operations as may be required by the *American Board of Dental Examiners, Inc.*, the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc. (WREB) for the purpose of sufficiently evaluating and testing the fitness of the examinee to practice dentistry.

ITEM 4. Amend subrule 12.2(5) as follows:

**12.2(5)** Failures. If a dental examinee applies for the *American Board of Dental Examiners, Inc.*, the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc., examination after having failed any other state or regional examination, the failures shall be considered Central Regional Dental Testing Service, Inc. ADEX, CRDTS, or Western Regional Examining Board, Inc. WREB failures for the purposes of retakes.

ITEM 5. Amend rule 650—12.3(147,153) as follows:

**650—12.3(147,153) Clinical examination procedure for dental hygiene.**

**12.3(1)** To meet the requirements for dental hygiene licensure by examination, applicants shall complete either the examination administered by the *American Board of Dental Examiners, Inc. (ADEX)*, the Central Regional Dental Testing Service, Inc. (CRDTS) examination, or the Western Re-

## DENTAL EXAMINERS BOARD[650](cont'd)

gional Examining Board, Inc. (WREB) examination, if taken after January 1, 2001.

**12.3(2)** Examinees shall meet the requirements for testing and follow the procedures established by either the *American Board of Dental Examiners, Inc.*, the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc.

**12.3(3)** Prior to December 31, 2003, the examinee must attain an average grade of 70 percent on the examination. Effective January 1, 2004, the examinee must attain a comprehensive score that meets the standard for passing established by ADEX, CRDTS, or WREB.

**12.3(4)** Each examinee shall be required to perform such practical demonstrations as may be required by the *American Board of Dental Examiners, Inc.*, the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc., for the purpose of sufficiently evaluating and testing the fitness of the examinee to practice dental hygiene.

ITEM 6. Amend subrule **12.4(1)**, paragraph “a,” as follows:

a. On the second examination attempt, a dental hygiene examinee shall be required to achieve a score of at least 70 percent. Effective January 1, 2004, the examinee must attain a comprehensive score that meets the standard for passing established by ADEX, CRDTS, or WREB.

ITEM 7. Amend subrule 12.4(5) as follows:

**12.4(5)** Failures. If a dental hygiene examinee applies for the *American Board of Dental Examiners, Inc.*, the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc., examination after having failed any other state or regional examination, the failures shall be considered Central Regional Dental Testing Service, Inc., ADEX, CRDTS, or Western Regional Examining Board, Inc., WREB failures for the purposes of retakes.

## ARC 4907B

## DENTAL EXAMINERS BOARD[650]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 14, “Renewal,” and Chapter 25, “Continuing Education,” Iowa Administrative Code.

The amendments specify that the cardiopulmonary resuscitation (CPR) course required for issuance, renewal, or reinstatement of a license, permit, or registration must include a clinical component. The purpose of the amendments is to protect patient safety by ensuring that licensees, permit holders and registrants demonstrate clinical CPR skills and do not simply take a home-study or on-line CPR course.

These amendments are subject to waiver or variance pursuant to Iowa Administrative Code 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendments on or before March 7, 2006. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examin-

ers, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to [Jennifer.Hart@iowa.gov](mailto:Jennifer.Hart@iowa.gov).

Also, there will be a public hearing on March 7, 2006, beginning at 2 p.m. in the Board Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the January 18, 2006, meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 17A, 147 and 153.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 14.1(4) as follows:

**14.1(4)** In order to renew a license, evidence of current certification in a nationally recognized course in cardiopulmonary resuscitation is required. *The course must include a clinical component.*

ITEM 2. Amend subrule 14.3(4) as follows:

**14.3(4)** Failure to provide proof of current certification in cardiopulmonary resuscitation in a course that includes a clinical component.

ITEM 3. Amend subrule **14.5(1)**, paragraph “i,” as follows:

i. Evidence that the applicant possesses a current certificate in a nationally recognized course in cardiopulmonary resuscitation. *The course must include a clinical component.*

ITEM 4. Amend subrule 25.2(10) as follows:

**25.2(10)** Licensees, faculty permit holders, and registrants shall furnish evidence of valid certification for cardiopulmonary resuscitation, which shall be credited toward the continuing education requirement for renewal of the license, faculty permit or registration. Such evidence shall be filed at the time of renewal of the license, faculty permit or registration. Credit hours awarded shall not exceed three continuing education credit hours per biennium. Valid certification means certification by an organization on an annual basis or, if that certifying organization requires certification on a less frequent basis, evidence that the licensee or registrant has been properly certified for each year covered by the renewal period. *In addition, the course must include a clinical component.*

**ARC 4879B****ECONOMIC DEVELOPMENT, IOWA  
DEPARTMENT OF[261]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 23, “Iowa Community Development Block Grant Program,” Iowa Administrative Code.

The proposed amendments revise the amount of funds set aside for a specified purpose, revise the method of distribution of recaptured funds and add an application requirement.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on March 7, 2006. Interested persons may submit written or oral comments by contacting Hank Manning, Community Development Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4836.

A public hearing to receive comments about the proposed amendments will be held on March 7, 2006, at 1:30 p.m. at the above address in the NW First Floor Conference Room.

These amendments are intended to implement Iowa Code section 15.108(1)“a.”

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 23.4(4) as follows:

**23.4(4)** Job creation, retention and enhancement fund. ~~Twenty-five~~ *Twenty* percent of funds shall be reserved for a job creation, retention and enhancement fund to be for work-force development and to expand economic opportunities and job training for LMI persons. Job creation, retention and enhancement funds are awarded through three programs: the economic development set-aside (EDSA), the public facilities set-aside (PFSA), and career link.

ITEM 2. Amend subrule 23.4(8) as follows:

**23.4(8)** Recaptured funds. Recaptured funds shall be returned to the competitive program for use through the water and sewer fund and community facilities and services fund. *As approved by the director, recaptured funds may be used to fund projects from the job creation, retention and enhancement fund or housing fund in order to respond to an immediate community or business need.* Recaptured funds remaining at the end of a program year shall be reallocated in amounts and to funds as approved by the director to ensure the availability of resources to those funds in which the greatest need is demonstrated to exist or to respond to a community or business need.

ITEM 3. Amend subrule **23.6(3)** by adding **new** paragraph “e” as follows and relettering paragraphs “e” and “f” as “f” and “g”:

e. Applicants shall submit with their applications approval from the department of natural resources of the preliminary engineering report for water projects and the facility plan for wastewater projects.

**ARC 4898B****ENVIRONMENTAL PROTECTION  
COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 459.103 and Iowa Code Supplement section 459A.104, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

The proposed amendments would authorize the Director to condition or deny a construction permit, to modify or disapprove a manure management plan, or to prohibit construction of a proposed confinement feeding operation at the proposed location if the Director concludes, after an evaluation by the Department, that the proposed confinement feeding operation or proposed expansion of a confinement feeding operation would reasonably be expected to cause: pollution of a water of the state; violation of state water quality standards; or an unreasonable burden on natural resources or the environment due to the current concentration of confinement feeding operations or associated manure application fields in a specific area. The proposed amendments would also authorize the Director, after Department evaluation and conclusion of similar impacts, to deny a construction permit, to disapprove a nutrient management plan, or to prohibit construction of a proposed open feedlot operation or the proposed expansion of an existing open feedlot operation.

Any interested person may make written suggestions or comments on the proposed amendments on or before March 10, 2006. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail [gene.tinker@dnr.state.ia.us](mailto:gene.tinker@dnr.state.ia.us).

Also, there will be public hearings as follows, at which time persons may present their views either orally or in writing:

March 7, 2006	9 a.m.	LeMars Public Library 46 1st Street SW LeMars, Iowa
March 7, 2006	7 p.m.	Audubon City Hall 410 N. Park Place Audubon, Iowa
March 8, 2006	2 p.m.	Urbandale Public Library 3520 86th Street Urbandale, Iowa
March 9, 2006	7 p.m.	Marr Park 2943 HWY 92 Ainsworth, Iowa

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

March 10, 2006 9 a.m. Waverly Library  
1500 W. Bremer Avenue  
Waverly, Iowa

At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Any persons who intend to attend a public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 459.103, 459.303 and 459.312 and Iowa Code Supplement section 459A.104.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 567—65.5(455B) by adopting the following **new** subrule:

**65.5(3)** The department may evaluate any proposed confinement feeding operation or proposed expansion of a confinement feeding operation that requires a construction permit or manure management plan, with respect to its potential adverse impacts on natural resources or the environment.

a. In conducting the evaluation, the department shall consider the following factors:

(1) The likelihood manure will be applied to frozen or snow-covered cropland.

(2) The proximity of the structures or manure application areas to sensitive areas, including but not limited to publicly owned land, designated areas, trout streams and karst terrain.

(3) Topography, slope, vegetation, potential means or routes of conveyance of manure spilled or land-applied. This factor includes but is not limited to whether the manure application areas involve cropland with predominant slopes greater than 9 percent without a conservation plan approved by the local soil and water conservation district or its equivalent and whether manure for land application is hauled or otherwise transported more than five miles.

(4) Whether the operation or manure application area is or will be located in a two-year capture zone for a public water supply.

b. In addition to the requirements in rules 65.9(455B), 65.10(455B), 65.11(455B), 65.15(455B) and 65.17(459), the department may deny a construction permit, disapprove a manure management plan or prohibit construction of the proposed operation at the proposed location if the director determines from the evaluation conducted pursuant to this subrule that the operation would reasonably be expected to result in any of the following impacts:

(1) Manure from the operation will cause pollution of a water of the state.

(2) Manure from the operation will cause a violation of state water quality standards.

(3) An unacceptable burden on natural resources or the environment in a specific area due to the current concentration of animal feeding operations or the associated manure application areas.

c. The department also may establish permit conditions or require amendments to the manure management plan in addition to the minimum requirements established for such operations, on the location of structures or manure applica-

tion, or other operational conditions necessary to avoid or minimize the adverse impacts.

d. A construction permit denial or condition, a manure management plan disapproval or required amendment, or a prohibition of construction pursuant to this subrule may be appealed according to the contested case procedures set forth in 561—Chapter 7.

ITEM 2. Amend rule 567—65.103(455B,81GA,HF805) by adopting the following **new** subrule:

**65.103(5)** The department may evaluate any proposed open feedlot operation or proposed expansion of an open feedlot operation that requires a construction permit with respect to its potential adverse impacts on natural resources or the environment. For the purpose of this subrule, open feedlot effluent includes manure, process wastewater, settled open feedlot effluent and settleable solids.

a. In conducting the evaluation, the department shall consider the following factors:

(1) The likelihood open feedlot effluent will be applied to frozen or snow-covered cropland.

(2) The proximity of the open feedlot operation structures or open feedlot effluent application areas to sensitive areas, including but not limited to publicly owned land, designated areas, trout streams and karst terrain.

(3) Topography, slope, vegetation, potential means or routes of conveyance of open feedlot effluent spilled or land-applied. This factor includes but is not limited to whether the open feedlot effluent application areas involve cropland with predominant slopes greater than 9 percent without a conservation plan approved by the local soil and water conservation district or its equivalent and whether open feedlot effluent for land application is hauled or otherwise transported more than five miles.

(4) Whether the operation or open feedlot effluent application area is or will be located in a two-year capture zone for a public water supply.

b. In addition to the requirements in rules 65.105(81GA,HF805), 65.109(81GA,HF805) and 65.112(81GA,HF805), the department may deny a construction permit, disapprove a nutrient management plan or prohibit construction of the proposed operation at the proposed location if the director determines from the evaluation conducted pursuant to this subrule that the operation would reasonably be expected to result in any of the following impacts:

(1) Open feedlot effluent from the operation will cause pollution of a water of the state.

(2) Open feedlot effluent from the operation will cause a violation of state water quality standards.

(3) An unacceptable burden on natural resources or the environment in a specific area due to the current concentration of animal feeding operations or the associated open feedlot effluent application areas.

c. The department also may establish permit conditions or require amendments to the nutrient management plan in addition to the minimum requirements established for such operations, on the location of structures or open feedlot effluent application, or other operational conditions necessary to avoid or minimize the adverse impacts.

d. A construction permit denial or condition, a nutrient management plan disapproval or required amendment, or a prohibition of construction pursuant to this subrule may be appealed according to the contested case procedures set forth in 561—Chapter 7.

**ARC 4893B****ENVIRONMENTAL PROTECTION  
COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.304, 455D.7 and 455D.9, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 105, “Organic Materials Composting Facilities,” Iowa Administrative Code.

The proposed amendments pertain to animal mortality composting and include other composting rule updates. The proposed amendments are needed to address the increased use of composting by Iowa farmers as a means to manage dead livestock. These revisions will add flexibility for farmers wanting to compost routine livestock mortalities from multiple sites at a centralized site, as well as aid compliance with the rules. Under the proposed amendments, a farmer wishing to compost routine livestock mortalities from multiple sites would no longer be required to obtain a permit to do so. Additionally, further provisions are included in the rules to ensure proper livestock mortality composting methods are used, related rules are modified to conform to the revised rules regarding mortality composting, references to DNR form numbers are updated and corrected, and the definition and filing of a “current cost estimate” are updated.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before Wednesday, March 15, 2006. Such written materials should be directed to Ken Bouma, Energy and Waste Management Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail [ken.bouma@dnr.state.ia.us](mailto:ken.bouma@dnr.state.ia.us). Persons wishing to convey their views orally should contact Ken Bouma at (515)281-7982.

When submitting comments, stakeholders are encouraged to utilize the following guidelines. These guidelines aid the Bureau in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business, organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

A public hearing will be held on Wednesday, March 15, 2006, from 10 a.m. to 12 noon in the Fifth Floor East Conference Room, Wallace State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources to advise of special needs.

These amendments are intended to implement Iowa Code sections 455B.304, 455D.7 and 455D.9.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend paragraph **105.1(2)“b”** as follows:

b. Permit by rule. Yard waste composting facilities are exempt from ~~having a permit~~ *permitting* if operated in conformance with 105.3(455B,455D) and 105.4(455B,455D). ~~Composting of dead farm animals generated on the same premises as the composting facility is~~ *Facilities that compost dead farm animals* are exempt from ~~having a permit~~ *permitting* if operated in conformance with 105.3(455B,455D) and 105.6(455B,455D). Small quantity solid waste compost operations as defined in 105.5(455B,455D) are exempt from permitting if operated in conformance with 105.3(455B, 455D) and 105.5(455B,455D).

ITEM 2. Amend subrule 105.3(3) as follows:

**105.3(3)** Measures shall be taken to prevent water from running onto the facility from adjacent land and to prevent compost leachate and runoff from leaving the composting facility. *Runoff from the composting facility must be properly managed.*

ITEM 3. Amend subrule 105.5(1) as follows:

**105.5(1)** Acceptable materials and amounts. Yard waste, ~~and food residuals, and agricultural waste~~ may be received from off premises at a total rate of two tons or less per week for composting either singly, ~~or~~ in combination, ~~or with agricultural waste~~. Any clean wood waste free of coating and preservatives may be used as a bulking agent. The two tons per week combined weight limit does not apply to bulking agent. However, the amount of bulking agent received must be appropriate for the amount of compostable materials received. Facilities composting over two tons of ~~food residuals and yard waste, food residuals and agricultural waste~~ per week in any combination from off premises must obtain a permit (Form 50A (542-1542A)) and adhere to the solid waste composting requirements stipulated in 105.7(455B, 455D) through 105.14(455B,455D). If only agricultural wastes are collected and composted, this rule does not apply. If only yard wastes are collected and composted, this rule does not apply.

ITEM 4. Amend rule 567—105.5(455B,455D) by adopting the following **new** subrule 105.5(3) and renumbering existing subrule **105.5(3)** as **105.5(4)**:

**105.5(3)** Signage. The facility shall have a permanent sign posted at the entrance specifying:

- a. Name of operation.
- b. Operating hours.
- c. Materials which are accepted or the statement “All materials must have prior approval.”
- d. Telephone number of 24-hour emergency contact person.

ITEM 5. Rescind rule 567—105.6(455B,455D) and adopt the following **new** rule in lieu thereof:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**567—105.6(455B,455D) Specific requirements for composting of dead farm animals.** Operators of dead farm animal composting facilities are encouraged to be trained, tested, and certified by a department-approved certification program upon approval of such a program by the department. A facility that composts dead farm animals is exempt from permitting if the following operating requirements are met and the facility is in compliance with 105.3(455B,455D). Businesses or individuals that are neither the owner nor operator of one or more of the sites where dead farm animals are generated and that want to compost dead farm animals must obtain a permit in accordance with 567—105.8(455B,455D).

**105.6(1)** Before commencing operation, the operator shall notify the department field office with jurisdiction over the facility.

**105.6(2)** Farm animals known or suspected to have died from an infectious disease that can be spread by scavengers or insects or that died from a reportable disease shall be disposed of in accordance with the requirements of the Iowa department of agriculture and land stewardship and the department.

**105.6(3)** Transportation vehicles shall be constructed to prevent spillage of liquids, and the most direct haul route shall be utilized.

**105.6(4)** No more than 5 percent of the total annual animal units, as defined in 567—65.1(455B), from the serviced livestock growing site(s) shall be composted annually without a permit at the facility.

**105.6(5)** No dead farm animal composting operation shall accept carcasses from a site outside a 20-mile radius from the composting facility.

**105.6(6)** Dead farm animals shall be incorporated into the composting process within 24 hours of their death. A 2-foot base and 1-foot cover layer of bulking agent around carcasses shall be maintained at all times to control leachate and odors, and to prevent access by scavenging domestic and wild animals.

**105.6(7)** Dead farm animals shall not be removed from composting until all soft tissue is fully decomposed. Full decomposition may not occur for six months to one year depending on weather conditions.

**105.6(8)** Compost (including bones that have not fully decomposed) shall be applied to cropland in a manner that minimizes the runoff into a water of the state. Application of the compost to lands other than cropland shall require prior approval by the department.

ITEM 6. Amend subrule 105.7(8) as follows:

**105.7(8)** Request for and approval of permit renewal. Requests for permit renewals shall be in writing and must be filed at least 90 days before the expiration of the current permit and submitted on a Form 50A to the department. The department may request that additional information be submitted for review in order to make a permit renewal decision. Comprehensive plan update requirements are satisfied through the information provided in the permit renewal application submittal and by compliance with the reporting requirements set forth in 105.12(455B,455D). If a solid waste composting facility is formally part of a planning area's integrated waste management system, the operator must participate in that area's plan update submittals. The department shall renew the permit if, after a review and inspection of the facility and its compliance history, the department finds that the facility is in compliance with its current permit and these rules. If the facility is found not to be in compliance with its current permit and these rules, then the sanitary disposal project shall be brought into compliance, or placed on a com-

pliance schedule approved by the department, before the permit is renewed pursuant to 105.7(5).

ITEM 7. Amend subrule 105.8(1), introductory paragraph, as follows:

**105.8(1)** A permit application for a new facility shall include a completed Form 50A (542-1542A) and a map or aerial photograph. This map or aerial photograph shall identify:

ITEM 8. Amend subrule **105.8(2)** by adopting new paragraph "**g**" as follows:

g. Proof of the applicant's ownership of the site and legal entitlement to use the site as a composting facility.

ITEM 9. Amend subrule **105.14(1)**, paragraph "**b**," as follows:

b. "Current cost estimate" means the cost estimate for 105.14(2), prepared and submitted to the department ~~on an annual basis at the time of application for a new composting facility permit and with each permit renewal thereafter~~ by an Iowa-licensed professional engineer or other professional as approved by the department.

ITEM 10. Amend subrule 105.14(2), introductory paragraph, as follows:

**105.14(2)** Current cost estimate. The current cost estimate shall be based upon ~~of~~ the following factors:

**ARC 4899B**

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Termination

Pursuant to the authority of Iowa Code section 234.6(4), the Department of Human Services terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on January 18, 2006, as **ARC 4822B**, amending Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

The Notice of Intended Action proposed amendments to the provisions for collection of Food Assistance claims. The Department proposed those amendments in response to the findings of a federal state agency operations review conducted by the USDA Food and Nutrition Service. The amendments were intended to maximize the effectiveness of Iowa's collection efforts, provide a more equitable performance measurement system by setting claim periods and thresholds that are similar to those of other states, and improve Iowa's performance ranking.

The Department has recently become aware that, based on how the Food and Nutrition Service ranks states on claims performance, implementing the proposed amendments would put Iowa at a disadvantage in accomplishing improvement in Iowa's performance ranking. Therefore, the Department is terminating rule making proposed in **ARC 4822B**.

**ARC 4889B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment adds the Iowa Department of Public Health as a Medicaid provider for lead investigation services. The federal Centers for Disease Control is requiring that all applicants for childhood lead poisoning prevention grants be Medicaid providers. The Iowa Department of Public Health certifies agencies to perform elevated blood lead inspections but has not been enrolled in the Iowa Medicaid program. This change in the conditions for participation in the Medicaid program will allow the Iowa Department of Public Health to enroll as a Medicaid provider and qualify for federal grant funds. The Iowa Department of Public Health performs lead inspections only in areas that have no local providers certified to provide the services, so the fiscal impact to the Medicaid program is minor.

This amendment does not provide for waivers in specified situations because it expands opportunities for participation in the Medicaid program. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendment on or before March 8, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment is intended to implement Iowa Code section 249A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Rescind rule 441—77.40(249A) and adopt the following **new** rule in lieu thereof:

**441—77.40(249A) Lead inspection agencies.** The Iowa department of public health and agencies certified by the Iowa department of public health pursuant to 641—subrule 70.5(5) are eligible to participate in the Medicaid program as providers of lead inspection services.

This rule is intended to implement Iowa Code section 249A.4.

**ARC 4902B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, “Amount, Duration, and Scope of Medical and Remedial Services,” Iowa Administrative Code.

These amendments eliminate the requirements for infant and toddler programs and local education agencies participating in the Medicaid program to certify that the nonfederal share of the costs of services under these programs is paid from unrestricted public funds and is not paid from federal funds.

The Department has determined that this certification is not necessary because both the federal and nonfederal shares of the reimbursement these providers receive for Medicaid services are paid initially by the Medicaid program. These providers are required to remit the nonfederal share of the payment to the Department because there are no state Medicaid funds appropriated for these services. Removal of the certification requirement also eliminates the need for these providers to track these funds separately in their accounts.

These amendments also make technical changes to:

- Correct references to the acronym for the Medicaid Patient Access to Service System (MediPASS).
- Add missing implementation statements for several rules.
- Update the implementation statement for pharmacy case management to replace a reference to session law.

These amendments do not provide for waivers in specified situations because they remove requirements that are currently imposed on agencies. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before March 8, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 249A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Strike the term “Medipass” and insert in lieu thereof “MediPASS” wherever the term appears in subrules **78.1(23)**, **78.21(3)**, and **78.39(3)**.

ITEM 2. Amend rules **441—78.22(249A)**, **441—78.23(249A)**, **441—78.33(249A)**, **441—78.41(249A)**, **441—78.43(249A)**, **441—78.49(249A)**, and **441—**

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**78.50(249A)** by inserting the following **new** implementation sentence at the end of each rule:

This rule is intended to implement Iowa Code section 249A.4.

ITEM 3. Amend the implementation sentence for rule **441—78.47(249A)** as follows:

This rule is intended to implement *Iowa Code section 249A.4 and 2000 Iowa Acts, Senate File 2435 chapter 1228, section 9.*

ITEM 4. Amend subrule **78.49(5)** as follows:

Rescind and reserve paragraph “a.”

Amend paragraph “c” as follows:

c. The infant and toddler program provider ~~has certified on shall sign and return~~ Form 470-3816, Medicaid Billing Remittance, ~~that along with the funds remitted for the non-federal share of the costs of the services are not federal funds and are unrestricted public funds available for match pursuant to 42 CFR 433.51 as amended January 26, 1993 specified on the form.~~

ITEM 5. Amend subrule **78.50(4)** as follows:

Rescind and reserve paragraph “a.”

Amend paragraph “c” as follows:

c. The local education agency provider ~~has certified on shall sign and return~~ Form 470-3816 Medicaid Billing Remittance, ~~that along with the funds remitted for the nonfederal share of the costs of the services are not federal funds as specified on the form.~~

## ARC 4901B

### HUMAN SERVICES DEPARTMENT[441]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments update rules on distribution of payments to hospitals from the Graduate Medical Education and Disproportionate Share Fund. These amendments revise the distribution of payments for hospitals that qualify to receive payments from the fund for inpatient or outpatient services using claims from state fiscal year 2006. These changes will allow distribution from the fund in state fiscal year 2007 to be based on more current information gained from the hospital rebasing project.

These amendments also make technical changes to:

- Update the Internet address for Medicaid provider fee schedules.
- Correct references to the Iowa Medicaid Enterprise Provider Cost Audits and Rate-Setting Unit.
- Replace definitions of “peer review organization (PRO)” with definitions of “quality improvement organization” or “QIO” in conformity with changes in federal regulations and update references to the organization. In Iowa,

most QIO functions are performed by the entity under contract with the Iowa Medicaid Enterprise as the Medical Services Unit. The Iowa Foundation for Medical Care currently holds this contract.

- Update the address for submission of requests for interim payments for Medicaid patients who have exceptionally long hospital stays.
- Update the mailing address for submission of provider cost reports and add the address for submitting cost reports by electronic mail.
- Correct references to the acronym for the Medicaid Patient Access to Service System (MediPASS).
- Replace a reference to a session law with the corresponding Iowa Code reference.

These amendments do not provide for waivers in specified situations because all hospitals should be subject to the same rules on distribution of payments from the Graduate Medical Education and Disproportionate Share Fund and because the other amendments are technical in nature. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before March 8, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 249A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **79.1(1)**, paragraph “c,” third unnumbered paragraph, as follows:

Fee schedules in effect for the providers covered by fee schedules can be obtained from the department’s Web site at: <http://www.dhs.state.ia.us/Medicaid/MedicaidFeeSched.asp> [http://www.ime.state.ia.us/Reports\\_Publications/FeeSchedules.html](http://www.ime.state.ia.us/Reports_Publications/FeeSchedules.html).

ITEM 2. Strike the words “provider audits and rate-setting unit” and insert in lieu thereof “provider cost audits and rate-setting unit” wherever the words appear in paragraphs **79.1(1)“g”** and **79.1(5)“aa”** and subparagraphs **79.1(5)“k”(2)**, **79.1(5)“y”(10)**, **79.1(16)“i”(1)** and **79.1(16)“j”(2)**.

ITEM 3. Amend subrule **79.1(5)**, paragraph “a,” by rescinding the definition of “peer review organization (PRO)” and adopting the following **new** definition in alphabetical order:

“Quality improvement organization” or “QIO” shall mean the organization that performs medical peer review of Medicaid claims, including review of validity of hospital diagnosis and procedure coding information; completeness, adequacy and quality of care; appropriateness of admission, discharge and transfer; and appropriateness of prospective payment outlier cases. These activities undertaken by the QIO may be included in a contractual relationship with the Iowa Medicaid enterprise.

ITEM 4. Amend subrule **79.1(5)**, paragraph “f,” introductory paragraph, as follows:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

f. Outlier payment policy. Additional payment is made for approved cases meeting or exceeding Medicaid criteria for day and cost outliers for each DRG. Effective for claims with dates of services ending July 1, 1993, and after, 100 percent of outlier costs will be paid to facilities at the time of claim reimbursement. The ~~PRO QIO~~ shall perform retrospective outlier reviews in accordance with the terms in the contract between the department and the ~~PRO QIO~~. The ~~PRO QIO~~ contract is available for review at the Iowa Department of Human Services Medicaid Enterprise, Hoover State Office Building, 1305 E. Walnut Street 100 Army Post Road, Des Moines, Iowa.

ITEM 5. Strike the term "PRO" and insert in lieu thereof "QIO" wherever the term appears in subparagraphs 79.1(5)"f"(2) and 79.1(5)"f"(3) and paragraphs 79.1(5)"n," 79.1(16)"l," 79.1(16)"n," and 79.1(16)"u."

ITEM 6. Amend subrule 79.1(5), paragraph "m," introductory paragraph, as follows:

m. Payment to out-of-state hospitals. Payment made to out-of-state hospitals providing care to beneficiaries of Iowa's Medicaid program is equal to either the Iowa statewide average blended base amount plus the statewide average capital cost add-on, multiplied by the DRG weight, or blended base and capital rates calculated by using 80 percent of the hospital's submitted capital costs. Hospitals that ~~submitted a cost report using data for Iowa Medicaid patients only before May 31, 2002, for the base year or that submit such a cost report no later than May 31 in the most recent~~ rebasing year will receive a case-mix-adjusted blended base rate using hospital-specific, Iowa-only Medicaid data and the Iowa statewide average cost per discharge amount.

ITEM 7. Amend subrule 79.1(5), paragraph "o," as follows:

o. Hospital billing. Hospitals shall normally submit claims for DRG reimbursement to the Iowa Medicaid enterprise after a patient's discharge.

(1) Payment for outlier days or costs is determined when the claim is paid by the Iowa Medicaid enterprise, as described in paragraph "f."

(2) When a Medicaid patient requires acute care in the same facility for a period of no less than 120 days, a request for partial payment may be made. Written requests for this interim DRG payment shall be addressed to the Iowa Department of Human Services, Office of the Deputy Director for Policy, 1305 East Walnut, Medicaid Enterprise, Attention: Provider Services Unit, P.O. Box 36450, Des Moines, Iowa 50309-0144 50315. ~~and A request for interim payment shall include:~~

1. ~~the~~ The patient's name, state identification number, and date of admission;;
2. A brief summary of the case;;
3. A current listing of charges; and
4. A physician's attestation that the recipient has been an inpatient for 120 days and is expected to remain in the hospital for a period of no less than 60 additional days.

A departmental employee representative will then contact the facility to assist the facility in filing the interim claim.

ITEM 8. Amend subrule 79.1(5), paragraph "y," as follows:

Amend subparagraph (3), numbered paragraph "1" and first unnumbered paragraph, as follows:

1. Multiply the total of all DRG weights for claims paid from July 1, 2002 2005, through June 30, 2003 2006, for each hospital reporting direct medical education costs that qualify

for payment as medical education costs under the Medicare program in the hospital's base year cost report by each hospital's direct medical education rate to obtain a dollar value.

Effective for payments from the fund for July 2003 2006, the state fiscal year used as the source of DRG weights shall be updated to July 1, 2002 2005, through June 30, 2003 2006. Thereafter, the state fiscal year used as the source of DRG weights shall be updated by a three-year period effective for payments from the fund for July of every third year.

Amend subparagraph (6), numbered paragraph "1" and first unnumbered paragraph, as follows:

1. Multiply the total of all DRG weights for claims paid from July 1, 2002 2005, through June 30, 2003 2006, for each hospital reporting direct medical education costs that qualify for payment as medical education costs under the Medicare program in the hospital's base year cost report by each hospital's indirect medical education rate to obtain a dollar value.

Effective for payments from the fund for July 2003 2006, the state fiscal year used as the source of DRG weights shall be updated to July 1, 2002 2005, through June 30, 2003 2006. Thereafter, the state fiscal year used as the source of DRG weights shall be updated by a three-year period effective for payments from the fund for July of every third year.

Amend subparagraph (7), fifth unnumbered paragraph, as follows:

Information contained in the hospital's available 2004 2004 submitted Medicare cost report is used to determine the hospital's low-income utilization rate and the hospital's Medicaid inpatient utilization rate.

Amend subparagraph (9), introductory paragraph, numbered paragraph "1" and first unnumbered paragraph, as follows:

(9) Distribution to qualifying hospitals for disproportionate share. Distribution of the amount in the fund for disproportionate share shall be on a monthly basis. To determine the amount to be distributed to each qualifying hospital for disproportionate share for months beginning with July 2002, the following formula is used:

1. Multiply the total of all DRG weights for claims paid July 1, 2002 2005, through June 30, 2003 2006, for each hospital that met the qualifications during the fiscal year used to determine the hospital's low-income utilization rate and Medicaid utilization rate (or for children's hospitals, during the preceding state fiscal year) by each hospital's disproportionate share rate to obtain a dollar value. For any hospital that qualifies for a disproportionate share payment only as a children's hospital, only the DRG weights for claims paid for services rendered to patients under 18 years of age at the time of admission in all distinct areas of the hospital where services are provided predominantly to children under 18 years of age shall be used in this calculation.

Effective for payments from the fund for July 2003 2006, the state fiscal year used as the source of DRG weights shall be updated to July 1, 2002 2005, through June 30, 2003 2006. Thereafter, the state fiscal year used as the source of DRG weights shall be updated by a three-year period effective for payments from the fund for July of every third year. In compliance with Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (Public Law 102-234) and 1992 Iowa Acts, chapter 1246, section 13, the total of disproportionate share payments from the fund and supplemental disproportionate share payments pursuant to paragraph 79.1(5)"ab" cannot exceed the amount of the federal cap under Public Law 102-234. If a hospital fails to qualify for disproportionate share payments from the fund due to closure or for any other reason, the amount of money that

## HUMAN SERVICES DEPARTMENT[441](cont'd)

would have been paid to that hospital shall be removed from the fund.

ITEM 9. Amend subrule **79.1(15)**, paragraph “a,” subparagraph (1), as follows:

(1) Providers shall submit cost reports for each waiver service provided using Form 470-0664, Financial and Statistical Report for Purchase of Service, and Form 470-3449, Supplemental Schedule. The cost reporting period is from July 1 to June 30. The completed cost reports shall be submitted to the IME Provider Cost Audits and Rate-Setting Unit, 100 Army Post Road P. O. Box 36450, Des Moines, Iowa 50315, or by electronic mail to [costaudit@dhs.state.ia.us](mailto:costaudit@dhs.state.ia.us), by September 30 of each year.

ITEM 10. Amend subrule **79.1(16)**, paragraph “a,” by rescinding the definition of “peer review organization (PRO)” and adopting the following **new** definition in alphabetical order:

“Quality improvement organization” or “QIO” shall mean the organization that performs medical peer review of Medicaid claims, including review of validity of hospital diagnosis and procedure coding information; completeness, adequacy and quality of care; and appropriateness of prospective payments for outlier cases and nonemergent use of the emergency room. These activities undertaken by the QIO may be included in a contractual relationship with the Iowa Medicaid enterprise.

ITEM 11. Amend subrule **79.1(16)**, paragraph “k,” as follows:

k. Payment to out-of-state hospitals. Payment made to out-of-state hospitals providing care to beneficiaries of Iowa’s Medicaid program is equal to either the Iowa statewide average case-mix-adjusted base amount or the Iowa statewide average case-mix-adjusted base amount blended with the hospital-specific base amount.

(1) Hospitals that submitted a cost report using data for Iowa Medicaid patients only before May 31, 2002, for the base year or that submit such a cost report no later than May 31 in a the most recent rebasing year will receive a case-mix-adjusted blended base rate using hospital-specific, Iowa-only Medicaid data and the Iowa statewide average cost per visit amount.

(2) If a hospital qualifies for reimbursement for direct medical education under Medicare guidelines, it shall qualify for reimbursement purposes in Iowa.

ITEM 12. Strike the term “Medipass” and insert in lieu thereof “MediPASS” wherever the term appears in paragraph **78.1(16)“r.”**

ITEM 13. Amend subrule **79.1(16)**, paragraph “v,” subparagraph (3), numbered paragraph “1” and first unnumbered paragraph, as follows:

1. Multiply the total count of outpatient visits for claims paid from July 1, 2002 2005, through June 30, 2003 2006, for each hospital reporting direct medical education costs that qualify for payment as medical education costs under the Medicare program in the hospital’s base year cost report by each hospital’s direct medical education rate to obtain a dollar value.

Effective for payments from the fund for July 2003 2006, the state fiscal year used as the source of the count of outpatient visits shall be updated to July 1, 2002 2005, through June 30, 2003 2006. Thereafter, the state fiscal year used as the source of the count of outpatient visits shall be updated by a three-year period effective for payments from the fund for July of every third year.

ITEM 14. Strike the phrase “2000 Iowa Acts, chapter 1228, section 8, subsection 11,” in subrule **79.1(19)**, paragraph “b,” and insert in lieu thereof “Iowa Code section 249A.26.”

ITEM 15. Amend rule 441—79.10(249A) as follows:

**441—79.10(249A) Requests for preadmission review.** The inpatient hospitalization of Medicaid recipients is subject to preadmission review by the Iowa Foundation for Medical Care (IFMC) Medicaid enterprise (IME) medical services unit as required in rule 441—78.3(249A).

**79.10(1)** The patient’s admitting physician, the physician’s designee, or the hospital will contact the IFMC IME medical services unit to request approval of Medicaid coverage for the hospitalization, according to instructions issued to providers by the IFMC IME medical services unit and instructions in the Medicaid provider’s provider manual.

**79.10(2)** Medicaid payment will not be made to the hospital if the IFMC IME medical services unit denies the procedure requested in the preadmission review.

**79.10(3)** A The IME medical services unit shall issue a letter of denial will be issued by the IFMC to the patient, the physician, and the hospital when a request is denied. The patient, the physician, or the hospital can may request a reconsideration of the decision by filing a written request with the IFMC IME medical services unit within 60 days of the date of the denial letter.

**79.10(4)** A The aggrieved party may appeal a denial by the IFMC of a request for reconsideration can be appealed by the aggrieved party to the department by the IME medical services unit according to 441—Chapter 7.

**79.10(5)** The requirement to obtain preadmission review is waived when the patient is enrolled in the managed health care option known as patient management and proper authorization for the admission has been obtained from the patient manager as described in 441—Chapter 88.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 16. Amend rule 441—79.11(249A) as follows:

**441—79.11(249A) Requests for preprocedure surgical review.** The Iowa Foundation for Medical Care (IFMC) Medicaid enterprise (IME) medical services unit conducts a preprocedure review of certain frequently performed surgical procedures to determine the necessity of the procedures and if Medicaid payment will be approved according to requirements found in subrules 78.1(19), 78.3(18), and 78.26(3).

**79.11(1)** Approval The physician must be requested by the physician request approval from the IFMC IME medical services unit when the physician expects to perform a surgical procedure appearing on the department’s preprocedure surgical review list published in the Medicaid providers’ provider manual. All requests for preprocedure surgical review shall be made according to instructions issued to physicians, hospitals and ambulatory surgical centers appearing in the Medicaid providers’ provider manual and instructions issued to providers by the IFMC IME medical services unit.

**79.11(2)** The IFMC IME medical services unit shall issue the physician shall be issued a validation number for each request by the IFMC and advised if shall advise whether payment for the procedure will be approved or denied.

**79.11(3)** Medicaid payment will not be made to the physician and other medical personnel or the facility in which the procedure is performed, i.e., hospital or ambulatory surgical center, if the IFMC IME medical services unit does not give approval.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**79.11(4)** ~~A The IME medical services unit shall issue a denial letter will be issued by the IFMC to the patient, the physician, and the facility when the requested procedure is not approved. The patient, the physician, or the facility can may request a reconsideration of the decision by filing a written request with the IFMC IME medical services unit within 60 days of the date of the denial letter.~~

**79.11(5)** ~~A The aggrieved party may appeal a denial letter of a request for reconsideration by the IFMC can be appealed by the aggrieved party to the department IME medical services unit in accordance with 441—Chapter 7.~~

**79.11(6)** The requirement to obtain preprocedure surgical review is waived when the patient is enrolled in the managed health care option known as patient management and proper authorization for the procedure has been obtained from the patient manager as described in 441—Chapter 88.

This rule is intended to implement Iowa Code section 249A.4.

## ARC 4890B

HUMAN SERVICES  
DEPARTMENT[441]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment rescinds the existing rule on records requirements for Medicaid providers and adopts a new rule in its place. The rule has been reorganized to eliminate duplication and to clarify policies. New requirements are added specifying a time limit for producing records when they are requested by Department representatives.

This rule gives providers 30 days for producing records and specifies that records that are not submitted timely will not be considered when the Department makes decisions about whether a claim is supported or should be denied or recouped. A provider will not be able to submit records in an appeal of a claim denial that the provider did not make available to the Department when the claim was originally adjudicated or reviewed. Submission of medical records for utilization review is required by the the Department’s contract with Medicaid providers and by federal regulation. Submission of records over an extended period increases Medicaid administrative costs and limits the ability of the state to recover overpayments timely.

A definition of “clinical record” is added to clarify that this term refers to documentation of service provision and is essentially synonymous with “service record.” Confusion about the term has arisen with service providers that are not health professionals, especially providers of home- and community-based services such as consumer-directed attendant care, home and vehicle modification, and personal emergency response services.

This rule provides for a 15-day extension (waiver) of the 30-day deadline for producing records when the provider es-

tablishes good cause and a second 15-day extension if the provider can show exceptional circumstances for the failure to produce the records. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendment on or before March 8, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment is intended to implement Iowa Code section 249A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Rescind rule 441—79.3(249A) and adopt the following **new** rule in lieu thereof:

**441—79.3(249A) Maintenance of records by providers of service.** Providers of services that are charged to the Iowa medical assistance program shall maintain fiscal records and clinical (service) records as required in this rule. Failure to maintain records or failure to make records available to the department or to its authorized representative timely upon request may result in claim denial or recoupment.

**79.3(1) Fiscal records.**

a. A provider of service shall maintain fiscal records:

- (1) As may be required to support the determination of the provider’s reimbursement rate under the program; and
- (2) In support of each item of service for which a charge is made to the program.

b. A fiscal record does not constitute a clinical or service record.

**79.3(2) Clinical records.** A provider of service shall maintain complete and legible clinical records for each service for which a charge is made to the program.

a. Definition. “Clinical record” means a tangible history documenting the provision of a service. A clinical record may also be known as a “service record.”

b. Purpose. The purpose of a clinical record or service record is to provide evidence that the service provided is:

- (1) Medically necessary;
- (2) Consistent with the diagnosis of the service recipient’s condition; and
- (3) Consistent with professionally recognized standards of care.

c. Components. The documentation for each service encounter shall identify the following:

- (1) The specific service, procedures, or treatments performed, including any medications or supplies dispensed.
- (2) The date when the service was provided and the duration of the service, if applicable.
- (3) The first and last name of the person who delivers the service.

(4) The need for the service, such as the service recipient’s complaint and symptoms; history; examination findings; diagnostic test results; assessment, clinical impression or diagnosis; or plan for care.

(5) The service recipient’s progress in response to the service and any changes in treatment or revision of diagnosis.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**79.3(3)** Maintenance requirement. The provider shall maintain fiscal records and clinical (service) records supporting each service for a minimum of five years from the date when a charge for the service was made to the program. After five years, the records may be destroyed.

**79.3(4)** Availability. The provider shall make supporting fiscal and clinical records available to the department or its authorized representative upon request.

a. Upon formal written request for records, the provider must submit all responsive records to the department or its authorized agent within 30 days of the mailing date of the request.

b. The department may grant an extension to the required submission date of up to 15 days if the provider submits a written request that:

(1) Establishes good cause for granting the request; and

(2) Is received by the department before the expiration of the initial 30-day period.

c. The department may grant one additional 15-day extension if the provider submits a written request that:

(1) Establishes exceptional circumstances for granting the request; and

(2) Is received by the department before the expiration of the initial 15-day extension period.

d. Records that are not received within the initial 30-day period or within an extension granted pursuant to 79.3(4)"b" or "c" shall not be accepted or considered in any decision by the department regarding claim denial or recoupment.

This rule is intended to implement Iowa Code section 249A.4.

**ARC 4900B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 252D.22, the Department of Human Services proposes to amend Chapter 98, "Support Enforcement Services," Iowa Administrative Code.

These amendments change provisions for determining the amount that shall be withheld from the income of a person who is obligated to pay a delinquent child support obligation, as recommended by the Child Support Advisory Committee created under Iowa Code section 252B.18. Members of the Advisory Committee include both parents who owe child support and parents who are owed support. The Committee seeks to balance the needs of both parties. These amendments do not change the amount of the delinquency, but will lower the amount withheld and increase time needed to pay off delinquent child support by income withholding.

These amendments remove time limits for a low-income parent receiving Social Security disability benefits or Supplemental Security Income disability benefits to request a decrease in the amount to be withheld to pay past-due support.

Current rules set the amounts to be withheld and allow parents to request a reduction in the amount to withhold to pay off arrears, but the reduction must be requested within 15 days of the notice of withholding. The rules provide for a lower rate of withholding for past-due support when a parent's income is at or below 200 percent of the federal poverty level.

These amendments allow withholding of the lower "hardship" amount to continue as long as the disability benefits continue, even if the amount to be withheld would otherwise change.

The Child Support Advisory Committee requested these changes to assist customers who are disabled. Many disabled obligors have limited income and, because they are disabled, cannot work to increase their incomes. Expanding exceptions to parents who are disabled under the Social Security Act provides a uniformly recognized standard that can be applied across the state and avoids subjective determinations of ability to pay. These amendments will apply to parents who become disabled after the effective date of the rules and to those who are currently disabled. The proposed amendments require the Department to identify parents who are already receiving disability benefits and notify them of the change in rules.

These amendments also lower the amount to withhold for past-due support when a parent asks the Child Support Recovery Unit to review and adjust the current support obligation, but the parent's income has not changed enough for an adjustment. Rules adopted in 1998 require the Unit to lower the amount withheld for arrears from 50 percent to 20 percent of the current obligation for orders entered or modified on or after July 1, 1998. For older orders that are not modified because the parent's income has not changed enough, the Unit currently can lower the withholding amount to 20 percent only if the Unit requested the review of the obligation. The proposed change would require the Unit to lower the withholding amount for arrears to 20 percent of the current obligation when either the Unit or the parent requests the review.

These amendments do not provide for waivers in specified situations because they remove restrictions and expand opportunities for parents who owe support. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before March 17, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

Interested persons may also present their views either orally or in writing at the public hearings listed below. Any person who intends to attend a public hearing and requires special accommodations for specific needs such as hearing or mobility impairments should contact the Office of Policy Analysis at (515)281-8440.

501 Sycamore, Suite 400  
Waterloo, Iowa

Wednesday, March 15, 2006  
9 to 10 a.m.

CSRU Conference Room  
3911 West Locust St.  
Davenport, Iowa

Wednesday, March 15, 2006  
10 to 11 a.m.

Third Floor DHS Conf. Rm.  
799 Main Street  
Dubuque, Iowa

Wednesday, March 15, 2006  
10 to 11 a.m.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

520 Nebraska Street, Suite 225 Sioux City, Iowa	Wednesday, March 15, 2006 10 to 11 a.m.
Third Floor Conference Room 1901 Bell Avenue Des Moines, Iowa	Thursday, March 16, 2006 9 to 10 a.m.
Conference Room 300 West Broadway, Suite 32 Council Bluffs, Iowa	Thursday, March 16, 2006 10 to 11 a.m.
Seventh Floor Conference Room 411 3rd Street SE Cedar Rapids, Iowa	Friday, March 17, 2006 8 to 10 a.m.

These amendments are intended to implement Iowa Code chapter 252D.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 441—98.24(252D) by adopting the following **new** subrule:

**98.24(5)** Disability continues. If hardship criteria under paragraph 98.43(2)“e” are met and the amount withheld as payment toward the arrears is modified, the obligor is deemed to continue to meet the hardship criteria for the duration of the social security disability benefits or supplemental security income disability benefits. If those benefits have not ended, but the amount to withhold would otherwise be amended under this rule and under rule 441—98.45(252D), the unit shall determine the amount to withhold for payment toward arrears under this rule by using the same percent as was used when the hardship amount was first determined under paragraph 98.43(2)“e,” but the amount shall not be less than \$5 per month.

ITEM 2. Amend subrule **98.43(2)** by adopting the following **new** paragraph “e”:

e. Notwithstanding paragraph 98.43(2)“a” and subparagraph 98.43(2)“b”(3), an obligor who has been awarded social security disability benefits or supplemental security income disability benefits under the federal Social Security Act may request an informal conference in writing at any time.

ITEM 3. Amend rule 441—98.45(252D) as follows:

Amend subrule 98.45(5) as follows:

**98.45(5)** Income withholding order and review and adjustment of orders. If CSRU has ~~initiated~~ *conducted* a review and adjustment of the obligation pursuant to 441—Chapter 99, Division IV . CSRU shall modify the amount withheld to be applied toward the liquidation of any delinquency to 20 percent upon completion of the *review and adjustment* process.

Adopt the following **new** subrule:

**98.45(6)** Disability ends. The amount required to be withheld was based on the hardship criteria on or after September 1, 2006, and CSRU has verified that the obligor is no longer receiving social security disability benefits or supplemental security income disability benefits, unless the benefits have been changed to social security retirement benefits.

ITEM 4. Adopt **new** rule 441—98.47(252D) as follows:

**441—98.47(252D) Additional information about hardship.** The child support recovery unit shall make reasonable efforts within 13 months of September 1, 2006, to identify and incrementally send information to obligors who may meet the requirements for hardship in paragraph 98.43(2)“e.”

**ARC 4861B****MEDICAL EXAMINERS  
BOARD[653]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 2, “Public Records and Fair Information Practices,” Iowa Administrative Code.

The Board approved the amendment during a meeting held on January 12, 2006.

The proposed amendment clarifies that a Board-ordered dismissal on part or all of the charges in a contested case is public record.

Any interested person may present written comments on the proposed amendment not later than 4:30 p.m. on March 7, 2006. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or sent by E-mail to [ann.mowery@iowa.gov](mailto:ann.mowery@iowa.gov).

A public hearing will be held on March 7, 2006, at 4 p.m. in the Board's conference room at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa. Interested persons may present their views either orally or in writing.

This amendment is intended to implement Iowa Code section 17A.12(6).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule 2.14(4) as follows:

**2.14(4)** Licensee disciplinary proceedings. The following information regarding licensee disciplinary proceedings:

- Formal charges and notices of hearing.
- Completed records of open disciplinary hearings. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4) or 272C.6.
- Final written decisions imposing sanctions, including informal stipulations and settlements; *or dismissing the charges, in whole or in part.*

## ARC 4871B

### MEDICAL EXAMINERS BOARD[653]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76, 148E.7, 272C.3, 272C.4, and 272C.5, the Board of Medical Examiners hereby gives Notice of Intended Action to rescind Chapter 12, "Mandatory Reporting and Grounds for Discipline," and to adopt new Chapter 22, "Mandatory Reporting," Chapter 23, "Grounds for Discipline," Chapter 24, "Complaints and Investigations," Chapter 25, "Contested Case Proceedings," and Chapter 26, "Reinstatement after Disciplinary Action," Iowa Administrative Code.

The Board approved the proposed amendments during its regularly held meeting on January 12, 2006.

The current Chapter 12 is rescinded and the chapter number is reserved. New Chapters 22 to 26 in effect replace Chapter 12. Chapter 22 addresses a licensee's obligation to report the following to the Board: adverse judgments or settlements, wrongful acts or omissions, and disciplinary action in another jurisdiction. The licensee's responsibility to report child abuse and dependent adult abuse to the appropriate authorities is also outlined.

Chapter 23 describes the 35 grounds for which the Board has authority to impose discipline, including civil penalties up to \$10,000.

Chapter 24 outlines the requirements to file a complaint and the immunity that exists for the complainant. The investigative process for the staff and Board is detailed, and the actions that the Board may take as the result of an investigation are described. The chapter addresses investigative subpoenas, doctor-patient privileged communications, and peer review. Ordering a physician to have a mental, physical, or clinical competency examination, including substance abuse evaluation or alcohol or drug screening, is included with instructions that explain how a physician may object to the order and how the Board may handle the objection.

Chapter 25 presents the rules that describe how the Board should handle contested case proceedings.

Chapter 26 addresses how a license that has been suspended or revoked may be reinstated.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on March 7, 2006. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to [ann.mowery@iowa.gov](mailto:ann.mowery@iowa.gov).

A public hearing will be held in the Board office on March 7, 2006, at 2 p.m., at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 17A, 148 and 148E and Iowa Code Supplement chapters 147 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be

available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind and reserve **653—Chapter 12.**

ITEM 2. Adopt the following **new** chapters:

#### CHAPTER 22 MANDATORY REPORTING

**653—22.1(272C) Mandatory reporting—judgments or settlements.** Each licensee, including a licensee holding an inactive license, shall report to the board every adverse judgment and every settlement of a claim against the licensee in a malpractice action to which the licensee is a party. The report, together with a copy of the judgment or settlement, must be filed with the board within 30 days from the date of said judgment or settlement. Failure to report judgments or settlements in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee who failed to report.

**653—22.2(272C) Mandatory reporting—wrongful acts or omissions.**

**22.2(1) Definitions.** For the purposes of this rule, the following definitions apply:

"Knowledge" means any information or evidence of reportable conduct acquired by personal observation, from a reliable or authoritative source, or under circumstances causing the licensee to believe that wrongful acts or omissions may have occurred.

"Reportable conduct" means a wrongful act or omission that may constitute a basis for disciplinary action under this chapter or any state law or administrative rule that gives the board jurisdiction over the conduct of a licensee.

**22.2(2) Reporting requirement.** A report shall be filed with the board when a licensee has knowledge as defined in this rule that another person licensed by the board may have engaged in reportable conduct.

a. The report shall be filed with the board no later than 30 days from the date the licensee acquires knowledge of the reportable conduct.

b. The report shall contain the name and address of the licensee who may have engaged in the reportable conduct, the date, time, place and circumstances in which the conduct occurred, and a statement explaining how knowledge of the reportable conduct was acquired.

c. The final determination of whether or not wrongful acts or omissions have occurred is the responsibility of the board.

d. A physician is not required to report confidential communication obtained from a physician in the course and as a result of a physician-patient relationship or when a state or federal statute prohibits such disclosure.

e. Failure to report a wrongful act or omission in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee who failed to report.

**653—22.3(272C) Mandatory reporting—disciplinary action in another jurisdiction.** Each licensee, including a licensee holding an inactive license, shall report to the board every license revocation, suspension or other disciplinary action taken against the licensee by a licensing authority of another state, an agency of the United States government, or any country, territory or other jurisdiction. The report must be filed with the board within 30 days from the date of the action

## MEDICAL EXAMINERS BOARD[653](cont'd)

against the physician's license. Failure to report such disciplinary action in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee.

**653—22.4(272C) Mandatory reporting—child abuse and dependent adult abuse.** Each licensee shall report child abuse and dependent adult abuse as required by state and federal law. Failure to report child abuse and dependent adult abuse as required by state and federal law in accordance with this rule shall constitute a basis for disciplinary action against the licensee.

These rules are intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

## CHAPTER 23 GROUNDS FOR DISCIPLINE

**653—23.1(272C) Grounds for discipline.** The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, 150, 150A, 252J, 261 or 272C or the rules promulgated thereunder. The grounds for discipline apply to physicians and acupuncturists. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

**23.1(1)** Violating any of the grounds for the revocation or suspension of a license as listed in Iowa Code section 147.55, 148.6, 148E.8 or 272C.10.

**23.1(2)** Professional incompetency. Professional incompetency includes, but is not limited to, any of the following:

- a. Willful or repeated gross malpractice;
- b. Willful or gross negligence;
- c. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;
- d. A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;

e. A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances;

f. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in the state of Iowa;

g. Failure to meet the acceptable and prevailing standard of care when delegating or supervising medical services provided by another physician, health care practitioner, or other individual who is collaborating with or acting as an agent, associate, or employee of the physician responsible for the patient's care, whether or not injury results.

**23.1(3)** Practice harmful or detrimental to the public. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent physician acting in the same or similar circumstances in this state, or when a physician is unable to practice medicine with reasonable skill and safety to patients as a result of a mental or physical impairment or chemical abuse.

**23.1(4)** Unprofessional conduct. Engaging in unethical or unprofessional conduct includes, but is not limited to, the

committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise, and whether committed within this state or elsewhere; or a violation of the standards and principles of medical ethics or 653—13.7(147,148,272C) or 653—13.20(147,148,150) as interpreted by the board.

**23.1(5)** Sexual misconduct. Engaging in sexual misconduct includes, but is not limited to, engaging in conduct set out at 653—subrule 13.7(4) or 13.7(6) as interpreted by the board.

**23.1(6)** Substance abuse. Substance abuse includes, but is not limited to, excessive use of alcohol, drugs, narcotics, chemicals or other substances in a manner which may impair a licensee's ability to practice the profession with reasonable skill and safety.

**23.1(7)** Indiscriminately or promiscuously prescribing, administering or dispensing any drug for other than lawful purpose includes, but is not limited to:

a. Self-prescribing or self-dispensing controlled substances.

b. Prescribing or dispensing controlled substances to members of the licensee's immediate family.

(1) Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the licensee conducts an examination, establishes a medical record, and maintains proper documentation.

(2) Immediate family includes the physician's spouse or domestic partner and either of the physician's, spouse's, or domestic partner's parents, stepparents or grandparents; the physician's natural or adopted children or stepchildren and any child's spouse, domestic partner or children; the siblings of the physician or the physician's spouse or domestic partner and the sibling's spouse or domestic partner; or anyone else living with the physician.

**23.1(8)** Physical or mental impairment. Physical or mental impairment includes, but is not limited to, any physical, neurological or mental condition which may impair a physician's ability to practice the profession with reasonable skill and safety. Being adjudged mentally incompetent by a court of competent jurisdiction shall automatically suspend a license for the duration of the license unless the board orders otherwise.

**23.1(9)** Felony criminal conviction. Being convicted of a felony in the courts of this state, another state, the United States, or any country, territory or other jurisdiction, as defined in Iowa Code section 148.6(2)"b."

**23.1(10)** Violation of the laws or rules governing the practice of medicine or acupuncture of this state, another state, the United States, or any country, territory or other jurisdiction. Violation of the laws or rules governing the practice of medicine includes, but is not limited to, willful or repeated violation of the provisions of these rules or the provisions of Iowa Code chapter 147, 148, 148E, 150, 150A or 272C or other state or federal laws or rules governing the practice of medicine.

**23.1(11)** Violation of a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violation of the terms and provisions of a consent agreement or settlement agreement entered into between a licensee and the board.

**23.1(12)** Violation of an initial agreement or health contract entered into with the Iowa physician health program (IPHP).

**23.1(13)** Failure to comply with an evaluation order. Failure to comply with an order of the board requiring a licensee

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to submit to evaluation under Iowa Code section 148.6(2)“h” or 272C.9(1).

**23.1(14)** Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a physician in the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy or by an acupuncturist.

**23.1(15)** Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice acupuncture or medicine and surgery, osteopathic medicine and surgery or osteopathy in this state, and includes false representations of material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged document submitted with an application for a license in this state.

**23.1(16)** Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a licensee's having made misleading, deceptive or untrue representations as to the acupuncturist's or physician's competency to perform professional services for which the licensee is not qualified to perform by education, training or experience.

**23.1(17)** Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making known to the public information or intention which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

- a. Inflated or unjustified claims which lead to expectations of favorable results;
- b. Self-laudatory claims that imply that the licensee is skilled in a field or specialty of practice for which the licensee is not qualified;
- c. Representations that are likely to cause the average person to misunderstand; or
- d. Extravagant claims or claims of extraordinary skills not recognized by the medical profession.

**23.1(18)** Obtaining any fee by fraud or misrepresentation.

**23.1(19)** Acceptance of remuneration for referral of a patient to other health professionals.

**23.1(20)** Knowingly submitting a false report of continuing education or failure to submit the required reports of continuing education.

**23.1(21)** Knowingly aiding, assisting, procuring, or advising a person in the unlawful practice of acupuncture or medicine and surgery, osteopathic medicine and surgery or osteopathy.

**23.1(22)** Failure to report disciplinary action. Failure to report a license revocation, suspension or other disciplinary action taken against the licensee by a licensing authority of another state, an agency of the United States government, or any country, territory or other jurisdiction within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

**23.1(23)** Failure to report voluntary agreements. Failure to report any voluntary agreement to restrict the practice of acupuncture or medicine and surgery, osteopathic medicine

and surgery or osteopathy entered into with this state, another state, the United States, an agency of the federal government, or any country, territory or other jurisdiction.

**23.1(24)** Failure to notify the board within 30 days after occurrence of any settlement or adverse judgment of a malpractice claim or action.

**23.1(25)** Failure to file the reports required by 653—22.2(272C) within 30 days concerning wrongful acts or omissions committed by another licensee.

**23.1(26)** Failure to comply with a valid subpoena issued by the board pursuant to Iowa Code sections 17A.13 and 272C.6 and 653—subrule 24.2(6) and rule 653—25.12(17A).

**23.1(27)** Failure to submit to a board-ordered mental, physical, clinical competency, or substance abuse evaluation or drug or alcohol screening.

**23.1(28)** The inappropriate use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a disability, to make a written signature or mark, however, may substitute in lieu of a signature a rubber stamp which is adopted by the disabled person for all purposes requiring a signature and which is affixed by the disabled person or affixed by another person upon the request of the disabled person and in the presence of the disabled person.

**23.1(29)** Maintaining any presigned prescription which is intended to be completed and issued at a later time.

**23.1(30)** Failure to comply with the recommendations issued by the Centers for Disease Control of the United States Department of Health and Human Services for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, or with the protocols established pursuant to Iowa Code chapter 139A.

**23.1(31)** Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary proceedings initiated under this rule shall follow the procedures set forth in Iowa Code chapter 252J and 653—Chapter 15.

**23.1(32)** Student loan default or noncompliance with an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261 and 653—16.2(261).

**23.1(33)** Improper management of medical records. Improper management of medical records includes, but is not limited to, failure to maintain timely, accurate, and complete medical records and failure to transfer medical records to another physician in a timely fashion when legally requested to do so by the subject patient or by a legally designated representative of the subject patient.

**23.1(34)** Failure to respond to or comply with a board investigation initiated pursuant to Iowa Code section 272C.3 and 653—24.2(17A,147,148,272C).

**23.1(35)** Failure to comply with the direct billing requirements for anatomic pathology services established in Iowa Code Supplement section 147.106.

This rule is intended to implement Iowa Code chapters 17A, 147, 148 and 272C.

## CHAPTER 24

## COMPLAINTS AND INVESTIGATIONS

**653—24.1(17A,147,148,272C) Complaints.**

**24.1(1)** Form and content of the complaint. A complaint shall be made in the form deemed acceptable by the board. The complaint shall contain the following information:

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a. The full name, address and telephone number of the complainant, except in instances in which the identity of the complainant is unknown.

b. The full name, address and telephone number, if known, of the licensee.

c. A clear and accurate statement of the facts that apprises the board of the allegations against the licensee.

**24.1(2)** Place and time of filing of the complaint. A written complaint may be delivered in person, by mail or electronically to the board office. The office address is Iowa Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686. The board's Web site address is [www.docboard.org/ia](http://www.docboard.org/ia).

**24.1(3)** Immunities. A person shall not be civilly liable as a result of filing a report or complaint with the board or peer review committee, or for the disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with proceedings of a peer review committee, or in connection with duties of the board. However, such immunity from civil liability shall not apply if such act is done with malice.

**653—24.2(17A,147,148,272C) Investigations.**

**24.2(1)** Investigations. Board staff shall open an investigative file upon receipt of a complaint or other appropriate information, or upon a motion of the board.

**24.2(2)** Complaint review committee.

a. The complaint review committee shall include the medical advisor, executive director, director of legal affairs and chief investigator. The complaint review committee shall review each case received by the board and shall utilize the following criteria to determine whether, and to what extent, each case shall be investigated by the board.

(1) If a case involves serious public safety issues, including but not limited to the following, the complaint review committee shall assign the case for investigation:

1. A clear violation of the laws and rules governing the practice of medicine;
2. Significant investigative history which raises serious concerns about the licensee's ability to practice medicine in a competent and safe manner;
3. Significant investigative history which raises serious concerns that the licensee has engaged in a pattern of unprofessional conduct or disruptive behavior that interferes with, or has the potential to interfere with, patient care or the effective functioning of health care staff;
4. Serious quality of care cases including severe patient harm, a pattern of inappropriate treatment, or serious medical errors;
5. Serious criminal conduct;
6. Substance abuse or other impairment that significantly impacts the physician's ability to practice medicine in a competent and safe manner;
7. Sexual misconduct;
8. Severe unprofessional conduct or disruptive behavior;
9. Disciplinary action by another regulatory authority; or
10. Unlicensed practice of medicine.

(2) If a case involves less serious public safety issues, including but not limited to the following, the complaint review committee may close the case administratively without investigation or review by the board:

1. Less serious quality of care cases that do not involve serious patient harm and are isolated occurrences rather than

a part of a pattern of inappropriate treatment or serious medical errors;

2. A single incident involving a billing dispute;
3. A single incident involving rude behavior or personal conflicts;

4. A single incident of communication problems; or
5. Poor record-keeping practices that are not repeated or ongoing in nature and do not significantly affect patient care.

(3) If the board does not have legal jurisdiction over a matter, the complaint review committee may close the case administratively without investigation or review by the board.

(4) If a case involves a matter that is already being addressed by the board, the complaint review committee may close the case administratively without investigation or review by the board.

(5) If a case is appropriate for referral to the board's Iowa physician health program (IPHP) as provided in the board's rules, the complaint review committee may refer the case to the IPHP administratively without investigation or review by the board.

b. The board may reopen any case that has been closed administratively by the complaint review committee at any time for review and reconsideration.

c. The complaint review committee shall prioritize cases that are assigned for investigation. The committee may provide recommendations to investigators regarding the nature of investigation to be completed. The medical advisor shall provide medical advice to the investigators as part of the investigative process.

**24.2(3)** Licensee response. Prior to the commencement of a contested case proceeding, the licensee who is the subject of the investigation shall be contacted and given the opportunity to respond to the allegations under investigation. Contact with the licensee and the licensee's response to the allegations may be made in writing or through a personal interview.

**24.2(4)** Investigative reports. Upon completion of an investigation, the investigator shall prepare a report for the board's consideration. The report shall set forth the information obtained in the course of the investigation and the response of the licensee.

**24.2(5)** Review of investigations. The full board shall review each case that is not closed by the complaint review committee to determine the appropriate board action.

a. Closure without action. If the board closes the case without action, the investigative file shall be closed and the board shall notify the complainant and the licensee by letter. The board may reconsider and reopen a closed investigation at a later date should it be deemed appropriate.

b. Further investigation. The board may determine that a case requires further investigation.

c. Peer review. The board may refer a case to a peer review committee for further review.

d. Appearance. The board or the licensee may request that the licensee appear before the board to discuss a pending investigation. The board has discretion on whether to grant a licensee's request for an appearance. By electing to participate in the appearance, the licensee waives any objection to a board member's both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds that:

- (1) Board members have personally investigated the case, and
- (2) Board members have combined investigative and adjudicative functions.

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If the executive director or director of legal affairs participates in the appearance, the licensee further waives any objection to having the executive director or director of legal affairs assist the board in the contested case proceeding.

e. Informal letter. If the board concludes that there is not probable cause to file disciplinary charges, the board may issue the licensee an informal letter of warning or education. A letter of warning or education is an informal communication between the board and the licensee and is not formal disciplinary action or a public record.

f. Statement of charges. If the board determines that there is probable cause for taking formal disciplinary action against a licensee, the board shall file a statement of charges and notice of hearing, thereby commencing a contested case proceeding.

g. Combined statement of charges, settlement agreement and final order. At the board's discretion, the board and the licensee may enter into a combined statement of charges, settlement agreement and final order to resolve a contested case proceeding.

h. Referral to the board of physician assistant examiners. Prior to the initiation of formal disciplinary charges in a case involving the supervision of a physician assistant, the board shall forward a copy of the investigative report to the board of physician assistant examiners for its advice and recommendations. The board of physician assistant examiners shall respond within six weeks or sooner if requested by the board. The board shall consider the advice and recommendations of the board of physician assistant examiners.

#### **24.2(6) Investigative subpoenas.**

a. Issuance of an investigative subpoena. The executive director or a designee may, upon the written request of a board investigator or on the executive director's own initiative, subpoena books, papers, records, and other real evidence which is necessary for a board investigation.

b. Request for subpoena. A written request for a subpoena shall contain the following:

- (1) The name and address of the person to whom the subpoena will be directed;
- (2) A specific description of the books, papers, records or other real evidence requested;
- (3) An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and
- (4) In the case of a subpoena request for mental health records, confirmation that the conditions described in 24.2(6)"d" have been satisfied.

c. Contents of subpoena. Each subpoena shall contain the following:

- (1) The name and address of the person to whom the subpoena is directed;
- (2) A description of the books, papers, records or other real evidence requested;
- (3) The date, time and location for production or inspection and copying;
- (4) The time within which a motion to quash or modify the subpoena must be filed;
- (5) The signature, address and telephone number of the executive director or designee;
- (6) The date of issuance; and
- (7) A return of service attached to the subpoena.

d. Subpoena for mental health records. In addition to the requirements above, the board shall document the following prior to the issuance of a subpoena for mental health records:

- (1) The nature of the complaint reasonably justifies the issuance of a subpoena;

(2) Adequate safeguards have been established to prevent unauthorized disclosure;

(3) An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

(4) An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

e. Motion to quash or modify subpoena. Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

f. Hearing on motion. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

g. Appeal of decision on motion. A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

h. Final agency action. If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

**24.2(7) Licensee-patient privileged communications.** The privilege of confidential communication between the recipient and the provider of health care services shall not extend to afford confidentiality to medical records maintained by or on behalf of the subject of an investigation by the board, or records maintained by any public or private agency or organization, which relate to a matter under investigation by the board. No provision of Iowa Code section 622.10, except as it relates to an attorney of the licensee, or the stenographer or confidential clerk of the licensee's attorney, shall be interpreted to restrict access by the board or its staff or agents to information sought in an investigation being conducted by the board.

**24.2(8) Investigation of malpractice lawsuits, judgments and settlements.** The board shall review reports received from insurance carriers and licensees involving malpractice lawsuits, adverse judgments, and settlements. The board may choose to investigate such reports in the same manner as is prescribed in these rules for the review and investigation of other complaints to determine whether there is probable cause under applicable statutes or administrative rules for licensee discipline.

**24.2(9) Confidentiality of investigative information.** All investigative information obtained by the board or its employees or agents, including peer reviewers acting under the authority of the board, in the investigative process is privileged and confidential. Board investigative information is

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not subject to discovery, subpoena, or other means of legal compulsion for its release to any person other than the licensee and the board or its employees and agents and is not admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, the statement of charges, settlement agreement or decision of the board in a contested case disciplinary proceeding shall be a public record.

**653—24.3(272C) Peer review.** The board may assign any case to peer review for evaluation of the professional services rendered by the licensee and report to the board.

**24.3(1)** Registration of peer reviewers. The board may register peer reviewers by maintaining a list of peer reviewers in the board office. The board shall enter into a contract with peer reviewers to provide peer review services.

**24.3(2)** Case referral for peer review. The board or board staff shall determine which peer reviewers will review a case and what investigative information shall be referred to a peer reviewer.

**24.3(3)** Board assistance to peer reviewers. The board may provide investigatory and related services to assist the peer reviewers.

**24.3(4)** Confidentiality. Peer reviewers shall observe the confidentiality requirements imposed by Iowa Code section 272C.6(4).

**24.3(5)** Liability, defense and indemnity. Peer reviewers shall not be liable for acts, omissions or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice. Peer reviewers shall be provided a defense by the state for civil lawsuits related to board peer review and shall be indemnified for all such judgments or settlements as provided by applicable law and administrative rules.

**24.3(6)** Written peer review report. Peer reviewers shall review the information provided by the board and provide a written report to the board.

a. The written report shall contain a statement of facts, an opinion of the peer reviewers whether the licensee violated the standard of care, and the rationale supporting the opinion.

b. The written report shall be signed by the peer reviewers concurring in the report.

c. If the peer reviewers find that they are unable to review the case, the investigative information shall be returned to the board.

**653—24.4(272C) Order for mental, physical, substance abuse or clinical competency evaluation or alcohol or drug screening.** All licensees of this board, as a condition of licensure, have a duty to submit to a mental, physical, substance abuse or clinical competency evaluation, or alcohol or drug screening, within a time specified by order of the board. Such evaluation may be ordered upon a showing of probable cause that the licensee suffers from a physical, physiological, mental or psychological condition, including substance abuse or addiction, which may impair the licensee's ability to discharge professional duties. The board may order a clinical competency evaluation upon a showing of probable cause of professional incompetence. The evaluation order and all information developed during the evaluation process shall remain part of a confidential investigative file pursuant to Iowa Code section 272C.6(4). The evaluation or screening shall be at the licensee's expense.

**24.4(1)** Content of order. A board order shall include the following items:

a. Probable cause. A showing by the board that there is probable cause to order the licensee to complete an evaluation.

b. Nature of evaluation or screening. A description of the type of evaluation or screening that the licensee must complete.

c. Evaluation facility. The name and address of the examiner or evaluation or treatment or screening facility that the board has identified to perform the evaluation.

d. Scheduling the evaluation. The amount of time in which the licensee must schedule the required evaluation.

e. Completion of the evaluation. The amount of time in which the licensee must complete the evaluation.

f. Board release. A requirement that the licensee sign all necessary releases for the board to communicate with the evaluator or the evaluation or treatment program and to obtain any reports generated by the program.

**24.4(2)** Alternatives. Following issuance of the evaluation order, the licensee may request additional time to schedule or complete the evaluation or to request the board to approve an alternative evaluator or treatment facility. The board shall determine whether to grant such a request.

**24.4(3)** Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request shall be filed within 14 days of issuance of the evaluation order. A licensee who fails to file a request for hearing to object to an evaluation order waives any future objection to the evaluation order in the event formal disciplinary charges are filed for failure to comply with the evaluation order or on any other grounds. The request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 653—Chapter 25.

**24.4(4)** Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

**24.4(5)** Order and reports confidential. An evaluation order and any subsequent evaluation reports issued in the course of a board investigation are confidential investigative information pursuant to Iowa Code section 272C.6(4).

**24.4(6)** Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the licensee's testimony or evaluation reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

**24.4(7)** Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, clinical competency or substance abuse evaluation or alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

These rules are intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

## CHAPTER 25

## CONTESTED CASE PROCEEDINGS

**653—25.1(17A) Definitions.** Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a

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no factual dispute contested case under Iowa Code section 17A.10A.

“Issuance” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“Party” means the state of Iowa or the respondent.

“Presiding officer” means the board of medical examiners or a panel of the board. In a disciplinary contested case proceeding, the board may request that an administrative law judge make initial rulings on prehearing matters, and assist and advise the board in presiding at the disciplinary contested case hearing.

“Proposed decision” means a hearing panel’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the full board did not preside.

“Quorum of the board” means a majority of the members of the board. Official action, including filing of formal charges or imposition of discipline, requires a majority vote of the members present.

**653—25.2(17A) Scope and applicability.** These rules apply to contested case proceedings conducted by the board of medical examiners.

**653—25.3(17A) Combined statement of charges, settlement agreement and final order.** Upon a determination by the board that probable cause exists to take formal disciplinary action, the board and the licensee may enter into a combined statement of charges, settlement agreement and final order.

**25.3(1)** Board discretion. The board has the sole discretion to determine whether to offer a licensee a combined statement of charges, settlement agreement and final order.

**25.3(2)** Voluntary agreement. Entering into a combined statement of charges, settlement agreement and final order is completely voluntary.

**25.3(3)** Contents. The combined statement of charges, settlement agreement and final order shall include a brief statement of the charges, the circumstances that led to the charges and the terms of settlement.

**25.3(4)** Resolution of the contested case. A combined statement of charges, settlement agreement and final order shall constitute the resolution of a contested case proceeding.

**25.3(5)** Public record. A combined statement of charges, settlement agreement and final order is a public record.

**653—25.4(17A) Statement of charges and notice of hearing.**

**25.4(1)** Probable cause. In the event that the board finds there is probable cause for taking disciplinary action against a licensee, the board shall order that a contested case hearing be commenced by the filing of a statement of charges and notice of hearing.

**25.4(2)** Legal review. Every statement of charges prepared by the board shall be reviewed by the office of the attorney general before it is filed.

**25.4(3)** Time requirements.

a. Time shall be computed as provided in Iowa Code section 4.1(34).

b. For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

**25.4(4)** Delivery. Delivery of the statement of charges and notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Restricted certified mail, return receipt requested; or

c. Publication, as provided in the Iowa Rules of Civil Procedure.

**25.4(5)** Contents. The statement of charges and notice of hearing shall contain the following information:

a. A statement by the board showing that there is probable cause to file the statement of charges;

b. A statement of the time, place, and nature of the hearing;

c. A statement of the legal authority and jurisdiction under which the hearing is to be held;

d. A reference to the particular sections of the statutes and rules involved;

e. A short and plain statement of the matters asserted. This statement shall contain sufficient detail to give the respondent fair notice of the allegations so the respondent may adequately respond to the charges, and to give the public notice of the matters at issue;

f. A statement that the party may be represented by legal counsel at the party’s own expense;

g. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and of parties’ counsel where known;

h. Reference to the procedural rules governing conduct of the contested case proceeding;

i. Reference to the procedural rules governing informal settlement;

j. Identification of the board as the presiding officer;

k. A statement requiring the respondent to submit an answer pursuant to subrule 25.10(2) within 20 days after receipt of the notice of hearing; and

l. When applicable, notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1)“a” and rule 25.7(17A), that the presiding officer be an administrative law judge.

**25.4(6)** Public record. A statement of charges and notice of hearing is a public record.

**653—25.5(17A) Legal representation.** Following the filing of the statement of charges and notice of hearing, the office of the attorney general shall be responsible for the legal representation of the public interest in all proceedings before the board.

**653—25.6(17A) Presiding officer in a disciplinary contested case.** The presiding officer in a disciplinary contested case shall be the board or a panel of the board. The board may request that an administrative law judge assist the board with initial rulings on prehearing matters. Decisions of the administrative law judge serving in this capacity are subject to the interlocutory appeal provisions of rule 25.23(17A). In addition, an administrative law judge may assist and advise the board presiding at the contested case hearing.

**653—25.7(17A) Presiding officer in a nondisciplinary contested case.**

**25.7(1)** Any party in a nondisciplinary contested case who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the board.

**25.7(2)** The board may deny the request only upon a finding that one or more of the following apply:

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a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

b. An administrative law judge with the qualifications identified in 25.7(4) is unavailable to hear the case within a reasonable time.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

**25.7(3)** The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in 25.7(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

**25.7(4)** An administrative law judge assigned to act as presiding officer in a nondisciplinary contested case shall have a juris doctorate degree.

**25.7(5)** Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer in a nondisciplinary contested case are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies. Such appeals must be filed within 10 days of the date of the issuance of the challenged ruling but no later than the time for compliance with the order or the date of hearing, whichever is first.

**25.7(6)** Unless otherwise provided by law, when reviewing a proposed decision of an administrative law judge in a nondisciplinary contested case upon intra-agency appeal, the board shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

### **653—25.8(17A) Disqualification.**

**25.8(1)** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party.

b. Has personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties. If the licensee elects to appear before the board in the investigative process pursuant to 653—paragraph 24.2(5)“d,” the licensee waives this provision.

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties.

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years.

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case.

f. Has a spouse or relative within the third degree of relationship that:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case.

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

**25.8(2)** The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include:

a. General direction and supervision of assigned investigators;

b. Unsolicited receipt of information which is relayed to assigned investigators;

c. Review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or

d. Exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 25.8(3) and 25.21(8).

By electing to participate in an appearance before the board pursuant to 653—paragraph 24.2(5)“d,” the licensee waives any objection to a board member’s both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds that the board member “personally investigated” the matter under this provision.

**25.8(3)** In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**25.8(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 25.8(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. The board shall determine the matter as part of the record in the case.

### **653—25.9(17A) Consolidation—severance.**

**25.9(1)** Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

**25.9(2)** Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

### **653—25.10(17A) Pleadings.**

**25.10(1)** Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

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**25.10(2)** Answer or appearance. An answer or appearance may be filed by the respondent within 20 days of service of the statement of charges and notice of hearing. The answer or appearance shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any. If the attorney is not licensed to practice law in Iowa, the attorney must fully comply with Iowa Court Rule 31.14.

**25.10(3)** Amendment. Amendments to the statement of charges and to an answer may be allowed with the consent of the parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

**653—25.11(17A) Service and filing.**

**25.11(1)** Service—when required. Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the assistant attorney general designated as prosecutor for the state, simultaneously with its filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**25.11(2)** Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**25.11(3)** Filing—when required. After the notice of hearing, all documents in a contested case proceeding shall be filed with the board. All documents that are required to be served upon a party shall be filed simultaneously with the board.

**25.11(4)** Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

**25.11(5)** Proof of mailing. Proof of mailing includes either:

- a. A legible United States Postal Service postmark on the envelope;
- b. A certificate of service;
- c. A notarized affidavit; or
- d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

**653—25.12(17A) Discovery.**

**25.12(1)** Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, or by agreement of the parties, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**25.12(2)** Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 25.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**653—25.13(17A,272C) Subpoenas in a contested case.**

**25.13(1)** Subpoenas issued in a contested case may compel the attendance of witnesses at depositions or hearing and may compel the production of books, papers, records, or other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas shall be issued by the executive director or designee upon written request. A request for a subpoena of mental health records must confirm the conditions described in 653—paragraph 24.2(6)“d” have been satisfied prior to the issuance of the subpoena.

**25.13(2)** A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes:

- a. The name, address and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date, time, and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records or other real evidence requested;
- f. The date, time and location for production, or inspection and copying; and
- g. In the case of a subpoena request for mental health records, confirmation that the conditions described in 653—paragraph 24.2(6)“d” have been satisfied.

**25.13(3)** Each subpoena shall contain, as applicable:

- a. The caption of the case;
- b. The name, address and telephone number of the person who requested the subpoena;
- c. The name and address of the person to whom the subpoena is directed;
- d. The date, time, and location at which the person is commanded to appear;
- e. Whether the testimony is commanded in connection with a deposition or hearing;
- f. A description of the books, papers, records or other real evidence the person is commanded to produce;
- g. The date, time and location for production, or inspection and copying;
- h. The time within which a motion to quash or modify the subpoena must be filed;
- i. The signature, address and telephone number of the board administrator or designee;
- j. The date of issuance; and
- k. A return of service attached to the subpoena.

**25.13(4)** Unless a subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes, the executive director or designee shall mail the subpoena to the requesting party, with a copy to the opposing

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party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

**25.13(5)** Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case, who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

**25.13(6)** Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct the hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

**25.13(7)** A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

**25.13(8)** If the person contesting the subpoena is not a party to the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

#### **653—25.14(17A) Motions.**

**25.14(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**25.14(2)** Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**25.14(3)** The presiding officer may schedule oral argument on any motion.

**25.14(4)** Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

#### **653—25.15(17A) Prehearing conferences.**

**25.15(1)** Any party may request a prehearing conference. Prehearing conferences shall be conducted by the executive director or designee, who may request the assistance of an administrative law judge. A written request for prehearing conference or an order for prehearing conference on the executive director's own motion shall be filed prior to the contested case hearing, but no later than 20 days prior to the hearing date.

**25.15(2)** The parties at a prehearing conference shall be prepared to discuss the following subjects, and the executive director or administrative law judge may issue appropriate orders concerning:

- a. The possibility of settlement.
- b. The entry of a scheduling order to include deadlines for completion of discovery.
- c. Stipulations of law or fact.
- d. Stipulations on the admissibility of exhibits.

e. Submission of expert and other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Any such amendments must be served on all parties. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.

f. Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Other than rebuttal exhibits, exhibits that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.

g. Stipulations for waiver of any provision of law.

h. Identification of matters which the parties intend to request be officially noticed.

i. Consideration of any additional matters which will expedite the hearing.

**25.15(3)** Prehearing conferences may be conducted by telephone unless otherwise ordered.

**653—25.16(17A) Continuances.** Unless otherwise provided, applications for continuances shall be filed with the board at least seven days before the date scheduled for hearing. If the application for continuance is not contested, the executive director or designee shall issue the appropriate order. If the application for continuance is contested, the matter shall be heard by the board as presiding officer or may be delegated by the board to an administrative law judge. No continuance shall be granted within seven days of the date of hearing except for extraordinary, extenuating or emergency circumstances.

**25.16(1)** A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request for continuance; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the board or the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within two days after the oral request unless that requirement is waived by the board or the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

**25.16(2)** The board or presiding officer may require documentation of any grounds for continuance. In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The public interest;
- d. The likelihood of informal settlement;
- e. The existence of an emergency;
- f. Any objection;
- g. Any applicable time requirements;
- h. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- i. The timeliness of the request; and
- j. Other relevant factors.

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**653—25.17(272C) Settlements agreements.**

**25.17(1)** A contested case may be resolved by settlement agreement. Settlement negotiations may be initiated by any party at any stage of a contested case. No party is required to participate in the settlement process. The executive director, director of legal affairs, or prosecuting attorney shall have authority to negotiate on behalf of the board.

**25.17(2)** The full board shall not be involved in negotiations until a written proposed settlement is submitted to the full board for approval, unless both parties waive this prohibition.

**25.17(3)** Consent to negotiation by the respondent during settlement negotiation constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17. Thereafter, the prosecuting attorney is authorized to discuss settlement with the board chairperson or designee.

**25.17(4)** Settlement negotiations shall be completed at least seven days prior to the date scheduled for hearing whenever possible.

**25.17(5)** A settlement agreement is a public record.

**653—25.18(17A) Hearing procedures.**

**25.18(1)** A hearing may be conducted before the board or a panel of not less than three members of the board, at least two of whom are licensed by the board.

**25.18(2)** When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

**25.18(3)** The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections. The presiding officer may request that an administrative law judge perform any of these functions and may be assisted and advised by an administrative law judge.

**25.18(4)** All objections shall be timely made and stated on the record.

**25.18(5)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

**25.18(6)** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

**25.18(7)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**25.18(8)** Witnesses may be sequestered during the hearing.

**25.18(9)** The presiding officer shall have authority to grant immunity from disciplinary action to a witness as provided by Iowa Code section 272C.6(3).

**25.18(10)** The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings.

b. The parties shall be given an opportunity to present opening statements.

c. The parties shall present their cases in the sequence determined by the presiding officer.

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law.

e. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.

**25.18(11)** The board members and administrative law judge have the right to question a witness. Examination of witnesses by board members is subject to properly raised objections.

**25.18(12)** The hearing shall be open to the public unless the licensee requests that the hearing be closed. At the request of either party, or on the board's own motion, the presiding officer may issue a protective order to protect documents which are privileged or confidential by law.

**653—25.19(17A) Evidence.**

**25.19(1)** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**25.19(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**25.19(3)** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**25.19(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**25.19(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**25.19(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**653—25.20(17A) Default.**

**25.20(1)** If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**25.20(2)** Where appropriate and not contrary to law, any party may move for default against a party who has failed to appear after proper service.

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**25.20(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 25.24(2). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

**25.20(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**25.20(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

**25.20(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under the Iowa Rules of Civil Procedure.

**25.20(7)** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 25.23(17A).

**25.20(8)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**25.20(9)** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 25.27(17A).

### **653—25.21(17A) Ex parte communication.**

**25.21(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this provision is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 25.8(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

**25.21(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending before the board.

**25.21(3)** Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

**25.21(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 25.11(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**25.21(5)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate to the extent necessary to carry out their function as presiding officer.

**25.21(6)** The executive director or director of legal affairs may be present to advise the board but shall not actively participate in deliberations as long as that person is not disqualified from participating under rule 25.8(17A).

**25.21(7)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 25.16(17A).

**25.21(8)** Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the contested case process must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified.

a. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order.

b. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**25.21(9)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**25.21(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the board and its executive director for possible sanctions includ-

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ing censure, suspension, dismissal, or other disciplinary action.

**653—25.22(17A) Recording costs.** Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

**653—25.23(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the board may review an interlocutory order of the executive director, administrative law judge, or hearing panel. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first. In determining whether to do so, the board shall consider:

1. The extent to which its granting the interlocutory appeal would expedite final resolution of the case; and
2. The extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy.

**653—25.24(17A) Decisions.**

**25.24(1)** Final decisions. When a quorum of the board presides over the reception of the evidence at the hearing, its decision is a final decision. A majority of the members of the board shall constitute a quorum. A final decision of the board is a public record. At the request of either party, or on the board's own motion, the presiding officer may issue a protective order to protect documents which are privileged or confidential by law.

**25.24(2)** Proposed panel decisions.

a. Panel of specialists. When a panel of three specialists presides over the hearing, the panel shall issue a proposed panel decision which shall include findings of fact but shall not include conclusions of law. A proposed decision of a panel of specialists, together with a transcript of the proceedings and the exhibits presented, shall be reviewed by the board within 30 days of the date the proposed decision was issued.

b. Panel of board members. When a panel of three or more board members presides over the hearing, the panel shall issue a proposed panel decision which shall include proposed findings of fact, conclusions of law, and order. A proposed panel decision shall be reviewed by the board within 30 days of the date the proposed panel decision was issued. A proposed panel decision becomes a final decision without further proceedings unless appealed in accordance with paragraph "c."

c. Appeal of proposed panel decisions. A proposed panel decision pursuant to 25.24(2)"a" or "b" may be appealed to the full board by either party by serving on the executive director, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision on the appealing party.

(1) Following receipt of a notice of appeal, the board shall enter an order establishing a schedule for submission of briefs and oral argument. The parties shall serve their briefs on the board and shall furnish an additional copy to each party by first-class mail.

(2) Oral argument shall be heard by the board unless waived by both parties. The time granted each party for oral argument shall be established by the board.

(3) The record on appeal shall be the entire record made before the hearing panel or administrative law judge.

d. Confidentiality. At no time prior to the release of the final decision by the board shall a proposed decision be made public or distributed to any person other than the parties.

e. Requests to present additional evidence. A party may request the taking of additional evidence after the issuance of a proposed decision only by establishing that:

- (1) The evidence is material; and
- (2) The evidence arose after the completion of the original hearing; or
- (3) Good cause exists for failure to present the evidence at the original hearing; and
- (4) The party has not waived the right to present additional evidence.

A written request to present additional evidence must be filed with the notice of appeal or by a nonappealing party within 14 days of service of the notice of appeal. The board may remand a case to the hearing panel for further hearing or may itself preside at the taking of additional evidence.

**653—25.25(272C) Disciplinary sanctions.**

**25.25(1)** If the board concludes following a contested case hearing that discipline is warranted, the board has authority to impose any of the following disciplinary sanctions:

- a. Revocation.
- b. Suspension.
- c. Restriction.
- d. Probation.
- e. Additional education or training.
- f. Reexamination.
- g. Physical or mental evaluation or substance abuse evaluation, or alcohol or drug screening or clinical competence evaluation.
- h. Civil penalties not to exceed \$10,000.
- i. Citation and warning.
- j. Imposition of such other sanctions allowed by law as may be appropriate.

**25.25(2)** At the discretion of the board, the following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

- a. The relative seriousness of the violation.
- b. The facts of the particular violation.
- c. Any extenuating circumstances or other countervailing considerations.
- d. Number of prior complaints, informal letters or disciplinary charges.
- e. Seriousness of prior complaints, informal letters or disciplinary charges.
- f. Whether the licensee has taken remedial action.
- g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

**653—25.26(17A) Application for rehearing.**

**25.26(1)** Who may file. Any party to a contested case proceeding may file an application for rehearing from a final order.

**25.26(2)** Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in paragraph 25.24(2)"e" and subrule 25.26(5), the applicant requests an opportunity to submit additional evidence.

**25.26(3)** Filing deadline. The application shall be filed with the board within 20 days after issuance of the final decision.

## MEDICAL EXAMINERS BOARD[653](cont'd)

**25.26(4)** Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

**25.26(5)** Additional evidence. A request that additional evidence be considered on rehearing shall be governed by paragraph 25.24(2)“e.”

**25.26(6)** Disposition. Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

**25.26(7)** Only remedy. Application for rehearing is the only procedure by which a party may request that the board reconsider a final board decision.

**653—25.27(17A) Stays of agency actions.**

**25.27(1)** When available. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying a stay or other temporary remedy.

**25.27(2)** When granted. In determining whether to grant a stay, the board shall consider the factors listed in Iowa Code section 17A.19(5)“c.” The board shall not grant a stay in any case in which the district court would be expressly prohibited by statute from granting a stay.

**653—25.28(17A) No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

**653—25.29(17A) Emergency adjudicative proceedings.**

**25.29(1)** Emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

**25.29(2)** Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify

the determination of an immediate danger and the board's decision to take immediate action. The order is a public record.

b. The written emergency adjudicative order shall be immediately delivered to the person who is required to comply with the order, by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the agency;

(3) Certified mail to the last address on file with the agency; or

(4) Fax, which may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

**25.29(3)** Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order is issued, the board shall make reasonable immediate efforts to contact by telephone the person who is required to comply with the order.

**25.29(4)** Completion of proceedings. After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for hearing. The licensee subject to the emergency adjudicative order may request a continuance of the hearing at any time upon written application with the board. The board will be granted a continuance only in compelling circumstances upon written application.

**653—25.30(17A) Appeal of license denial.** A preliminary notice of denial of license may be appealed by filing a written notice of appeal and request for hearing with the board within 30 days of the date that the preliminary notice of denial of license was mailed by the board. The hearing shall be a contested case and shall be conducted in accordance with this chapter.

**653—25.31(17A) Judicial review and appeal.** Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of the board's order.

**653—25.32(17A) Public record.** The final decision of the board is a public record. The board shall report final decisions to the appropriate organizations, including but not limited to the National Practitioner Data Bank, the Federation of State Medical Boards and all media and other organizations who have filed a request for public information.

**653—25.33(272C) Disciplinary hearings—fees and costs.**

**25.33(1)** Definitions. As used in this rule in relation to a formal disciplinary action filed by the board against a licensee:

“Deposition” means the testimony of a person taken pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

“Evaluation fees” means actual costs incurred by the board in a physical, mental, chemical abuse, other impairment-related examination or evaluation or clinical competency evaluation of a licensee when the examination or evaluation is conducted pursuant to an order of the board.

## MEDICAL EXAMINERS BOARD[653](cont'd)

"Expenses" means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

"Transcript" means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

"Witness fees" means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa. For the purpose of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72, as applicable.

**25.33(2)** Disciplinary hearing fee. The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board.

An order assessing a fee shall be included as part of the board's final decision. The order shall direct the licensee to deliver payment directly to the board as provided in subrule 25.33(6).

**25.33(3)** Recovery of related hearing costs. The board may also recover from the licensee the costs for transcripts, witness fees and expenses, depositions, and medical examination fees. The board may assess these costs in the manner it deems most equitable in accordance with the following:

a. Transcript costs. The board may recover the costs for the court reporter and assess the transcript costs against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

(1) The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

(2) In the event of an appeal to the full board from a proposed decision, the appealing party shall timely request and pay for the transcript necessary for use in the agency appeal process.

b. Witness fees and expenses. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing. In addition, the board may assess a licensee the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa, provided that the costs are calculated as follows:

(1) The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(2) The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(3) The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

(4) The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue guidelines in effect on January 1, 2005.

c. Deposition costs. Deposition costs for purposes of allocating costs against a licensee include only those deposition costs incurred by the state of Iowa. The licensee is directly responsible for the payment of deposition costs incurred by the licensee.

(1) The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

(2) If the deposition is of an expert witness, the deposition cost includes a reasonable fee for an expert witness. This fee shall not exceed the expert's customary hourly or daily fee, and shall include the time reasonably and necessarily spent in connection with such deposition, including the time spent in travel to and from the deposition, but excluding time spent in preparation for that deposition.

d. Medical examination fees. All costs of physical or mental examinations or substance abuse evaluations or drug screening or clinical competency evaluations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation of a pending complaint or as a sanction following a contested case shall be paid directly by the licensee.

**25.33(4)** Certification of reimbursable costs. The executive director or designee shall certify any reimbursable costs to the board. The executive director shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on the party responsible for payment of the certified costs at the time of the filing.

**25.33(5)** Assessment of fees and costs. A final decision of the board imposing disciplinary action against a licensee shall include the amount of any disciplinary hearing fee assessed, which shall not exceed \$75. If the board also assesses reimbursable costs against the licensee, the board shall file a Certification of Reimbursable Costs which includes a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

a. Prior to seeking judicial review, a party shall file an objection to any fees or costs imposed by the board in order to exhaust administrative remedies. An objection shall be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

b. The application shall be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

**25.33(6)** Payment of fees and costs. All fees and costs assessed pursuant to this rule shall be made in the form of a check or money order made payable to Iowa Board of Medical Examiners and delivered by the licensee to the board office.

**25.33(7)** Failure to make payment. Failure of a licensee to pay any fees and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

## MEDICAL EXAMINERS BOARD[653](cont'd)

**25.33(8)** Repayment receipts. Fees and costs collected by the board pursuant to this rule shall be considered repayment receipts as defined in Iowa Code section 8.2.

These rules are intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

## CHAPTER 26

## REINSTATEMENT AFTER DISCIPLINARY ACTION

**653—26.1(17A) Reinstatement.** Any person whose license has not been permanently suspended or revoked by the board may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension.

**26.1(1)** If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board order or the date of voluntary surrender.

**26.1(2)** All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the respondent's license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement shall be subject to the same rules of procedure as other cases before the board.

**26.1(3)** An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

**26.1(4)** At the board's discretion, the board and the licensee may agree to enter into a reinstatement order by agreement, in lieu of a formal reinstatement hearing before the board.

**26.1(5)** A reinstatement order must be based upon the affirmative vote of a quorum of the board. The reinstatement order is public information pursuant to 653—25.32(17A).

**26.1(6)** A physician seeking reinstatement under this rule whose license became inactive during the period of suspension or revocation is also required to complete the reactivation process set forth in 653—9.13(147,148,150,150A) or 653—9.14(147,148,150,150A).

This rule is intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

## ARC 4872B

MEDICAL EXAMINERS  
BOARD[653]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Standards

of Practice and Principles of Medical Ethics,” Iowa Administrative Code.

The Board approved the proposed amendment to Chapter 13 during a regularly scheduled meeting on January 12, 2006.

The proposed amendment establishes collaborative drug therapy management between Iowa-licensed physicians and pharmacists in the community and hospital practice settings. After a physician and pharmacist execute a protocol and submit it to the Board of Pharmacy Examiners, the protocol may be used to guide collaborative practice with the physicians' and pharmacists' patients who provide written consent. A hospital pharmacy and therapeutics (P&T) committee may authorize hospital pharmacists to perform drug therapy management for inpatients or clinic patients in the hospital's clinics through a hospital practice protocol. A hospital clinic means an outpatient care clinic operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee. The rule outlines the requirements of community and hospital practice protocols.

Any interested person may present written comments on the proposed amendment not later than 4:30 p.m. on March 8, 2006. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or by E-mail to [ann.mowery@iowa.gov](mailto:ann.mowery@iowa.gov).

There will be a public hearing held jointly by the Board of Medical Examiners and the Board of Pharmacy Examiners on March 8, 2006, at 3 p.m. at the office of the Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa. Interested persons may present their views either orally or in writing.

This amendment is intended to implement Iowa Code chapters 148, 150 and 150A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Renumber rule **653—13.4(147,148,150)** as **653—13.5(147,148,150)** and adopt the following **new** rule 653—13.4(147):

**653—13.4(147) Supervision of pharmacists engaged in collaborative drug therapy management.** A supervising physician may only delegate aspects of drug therapy management to an authorized pharmacist pursuant to a written protocol with a pharmacist pursuant to the requirements of this rule. The physician is considered the supervisor and retains the ultimate responsibility for the care of the patient. The authorized pharmacist retains full responsibility for proper execution of pharmacy practice.

**13.4(1) Definitions.**

“Authorized pharmacist” means an Iowa-licensed pharmacist who meets the training requirements of the Iowa board of pharmacy examiners board (IBPE) as specified in the drug therapy management criteria in 657—8.34(155A).

“Board” means the board of medical examiners of the state of Iowa.

“Collaborative drug therapy management” means participation by a physician and an authorized pharmacist in the management of drug therapy pursuant to a written community practice protocol or a written hospital practice protocol.

“Collaborative practice” means that a physician may delegate aspects of drug therapy management for the physician's

## MEDICAL EXAMINERS BOARD[653](cont'd)

patients to an authorized pharmacist through a written community practice protocol. "Collaborative practice" also means that a hospital pharmacy and therapeutics (P&T) committee may authorize hospital pharmacists to perform drug therapy management for inpatients and the hospital's clinic patients through a hospital practice protocol when the clinic and the pharmacist are under the direct authority of the hospital's P&T committee.

"Community practice protocol" means a written, executed agreement entered into voluntarily between a physician and an authorized pharmacist establishing drug therapy management for one or more of the physician's patients residing in a community setting. A community practice protocol shall comply with the requirements of subrule 13.4(2).

"Community setting" means a location outside a hospital inpatient, acute care setting or a hospital clinic setting. A community setting may include, but is not limited to, a home, group home, assisted living facility, correctional facility, hospice, or long-term care facility.

"Hospital clinic" means an outpatient care clinic operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

"Hospital pharmacist" means an Iowa-licensed pharmacist who meets the requirements for participating in a hospital practice protocol as determined by the hospital's P&T committee.

"Hospital practice protocol" means a written plan, policy, procedure, or agreement that authorizes drug therapy management between physicians and hospital pharmacists within a hospital and its clinics as developed and determined by its P&T committee. Such a protocol may apply to all physicians and hospital pharmacists at a hospital or the hospital's clinics under the direct authority of the hospital's P&T committee or only to those physicians and pharmacists who are specifically recognized. A hospital practice protocol shall comply with the requirements of subrule 13.4(3).

"IBPE" means the Iowa board of pharmacy examiners.

"Physician" means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy. A physician who executes a written protocol with an authorized pharmacist shall supervise the pharmacist's activities involved in the overall management of patients receiving medications or disease management services under the protocol. The physician may delegate only drug therapies that are in areas common to the physician's practice.

### 13.4(2) Community practice protocol.

a. A physician shall engage in collaborative drug therapy management with a pharmacist only under a written protocol that is identified by topic and has been submitted to the IBPE or a committee authorized by the IBPE. A protocol executed after July 1, 2008, will no longer be required to be submitted to the IBPE; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBPE.

b. The community practice protocol shall include:

(1) The name, signature, date and contact information for each authorized pharmacist who is a party to the protocol and is eligible to manage the drug therapy of a particular patient. If more than one authorized pharmacist is a party to the agreement, the pharmacists shall work for a single licensed pharmacy and a principal pharmacist shall be designated in the protocol.

(2) The name, signature, date and contact information for each physician who may prescribe drugs and is responsible for supervising a patient's drug therapy management. The

physician who initiates a protocol shall be considered the main caregiver for the patient respective to that protocol and shall be noted in the protocol as the principal physician.

(3) The name and contact information of the principal physician and the principal authorized pharmacist who are responsible for development, training, administration, and quality assurance of the protocol.

(4) A detailed written protocol pursuant to which the authorized pharmacist will base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration and route of administration of the drug authorized by the patient's physician. The protocol shall not authorize the pharmacist to change a Schedule II drug or initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the pharmacist to obtain or conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions or determine if the patient should be referred back to the patient's physician for follow-up.

4. Patient activities. The protocol may authorize the pharmacist to monitor specific patient activities.

(5) Procedures for the physician to secure the patient's written consent. If the physician does not secure the patient's written consent, the pharmacist shall secure such and notify the patient's physician within 24 hours.

(6) Circumstances that shall cause the pharmacist to initiate communication with the physician, including but not limited to the need for new prescription orders and reports of the patient's therapeutic response or adverse reaction.

(7) A detailed statement identifying the specific drugs, laboratory tests and physical findings upon which the pharmacist shall base drug therapy management decisions.

(8) A provision for the collaborative drug therapy protocol to be reviewed, updated and reexecuted or discontinued at least every two years.

(9) A description of the method the pharmacist shall use to document the pharmacist's decisions or recommendations for the physician.

(10) A description of the types of reports the physician requires the pharmacist to provide and the schedule by which the pharmacist is to submit these reports. The schedule shall include a time frame in which a pharmacist shall report any adverse reaction to the physician.

(11) A statement of the medication categories and the type of initiation and modification of drug therapy that the physician authorizes the pharmacist to perform.

(12) A description of the procedures or plan that the pharmacist shall follow if the pharmacist modifies a drug therapy.

(13) Procedures for record keeping, record sharing and long-term record storage.

(14) Procedures to follow in emergency situations.

(15) A statement that prohibits the pharmacist from delegating drug therapy management to anyone other than another

## MEDICAL EXAMINERS BOARD[653](cont'd)

er authorized pharmacist who has signed the applicable protocol.

(16) A statement that prohibits a physician from delegating collaborative drug therapy management to any unlicensed or licensed person other than another physician or authorized pharmacist.

(17) A description of the mechanism for the pharmacist and physician to communicate with each other and for documentation by the pharmacist of the implementation of collaborative drug therapy.

c. Collaborative drug therapy management is valid only when initiated by a written protocol executed by at least the patient's physician and one authorized pharmacist.

d. A collaborative drug therapy management protocol must be filed with the IBPE, kept on file in the pharmacy and made available to the board or IBPE upon request. A protocol executed after July 1, 2008, will no longer be required to be submitted to the IBPE; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBPE.

e. A physician may terminate or amend the collaborative drug therapy management protocol with an authorized pharmacist if the physician notifies, in writing, the pharmacist and the IBPE. Notification shall include the name of the authorized pharmacist, the desired change, and the proposed effective date of the change. After July 1, 2008, the physician shall no longer be required to notify the IBPE of changes in the protocol.

f. Patient consent for community practice protocols. The physician or pharmacist who initiates a protocol with a patient is responsible for securing a patient's written consent to participate in drug therapy management and for transmitting a copy of the consent to the other party within 24 hours. The consent shall indicate which protocol is involved. Any variation in the protocol for a specific patient needs to be communicated to the other party at the time of securing the patient's consent. The patient's physician shall maintain the patient consent in the patient's medical record.

### 13.4(3) Hospital practice protocol.

a. A hospital's P&T committee shall determine the scope and extent of collaborative drug therapy management practices that may be conducted by its hospital pharmacists in the hospital and its clinics. Hospital clinics are restricted to outpatient care clinics operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

b. Collaborative drug therapy management within a hospital setting or the hospital's clinic setting is valid only when approved by the hospital's P&T committee.

c. The hospital practice protocol shall include:

(1) The names or groups of physicians and pharmacists who are authorized by the P&T committee to participate in collaborative drug therapy management.

(2) A plan for development, training, administration, and quality assurance of the protocol.

(3) A detailed written protocol pursuant to which the hospital pharmacist shall base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Medication orders and prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration and route of administration of the drug authorized by the

physician. The protocol shall not authorize the hospital pharmacist to change a Schedule II drug or initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the hospital pharmacist to obtain or conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the hospital pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions or determine if the patient should be referred back to the physician for follow-up.

(4) Circumstances that shall cause the hospital pharmacist to initiate communication with the patient's physician, including but not limited to the need for new medication orders and prescription drug orders and reports of a patient's therapeutic response or adverse reaction.

(5) A statement of the medication categories and the type of initiation and modification of drug therapy that the protocol authorizes the hospital pharmacist to perform.

(6) A description of the procedures or plan that the hospital pharmacist shall follow if the hospital pharmacist modifies a drug therapy.

(7) A description of the mechanism for the hospital pharmacist and the patient's physician to communicate and for the hospital pharmacist to document implementation of the collaborative drug therapy.

This rule is intended to implement Iowa Code chapters 148, 150 and 150A.

## ARC 4880B

### PHARMACY EXAMINERS BOARD[657]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 3, "Pharmacy Technicians," and Chapter 7, "Hospital Pharmacy Practice," Iowa Administrative Code.

The amendments were approved at the January 26-27, 2006, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments to Chapter 7 authorize the pharmacist in charge to designate pharmacy technicians who may be present in the pharmacy to perform authorized activities in the absence of a pharmacist. The amendments specifically identify activities that may not be performed when the pharmacy is closed and require the technician to maintain a log identifying each period of time that the technician worked in the pharmacy when the pharmacist was not on site. Rule 657—3.21(155A) is amended to reference the procedures relating to pharmacy technicians authorized in 657—Chapter 7. Subrule 7.8(3) is amended to establish requirements for pharmacist review of medication orders when the

## PHARMACY EXAMINERS BOARD[657](cont'd)

hospital and pharmacy utilize an integrated electronic record system or a paperless electronic medical record system.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on March 8, 2006. Such written materials should be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@iowa.gov).

These amendments are intended to implement Iowa Code sections 155A.6, 155A.13, 155A.27, and 155A.33.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 657—3.21(155A) as follows:

**657—3.21(155A) Delegation of technical functions.** A pharmacist may delegate technical dispensing functions to a pharmacy technician, but only if the pharmacist is on site when delegated functions are performed, except as provided in 657—subrule 6.7(2) or 657—subrule 7.6(2), as appropriate. The pharmacist shall provide and document the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative.

ITEM 2. Amend rule 657—7.2(155A) as follows:

**657—7.2(155A) Pharmacist in charge.** One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, the items identified in this rule. A part-time pharmacist in charge has the same obligations and responsibilities as a full-time pharmacist in charge. Where 24-hour operation of the pharmacy is not feasible, a pharmacist shall be available on an "on call" basis.

1. Ensuring that the pharmacy utilizes an ongoing, systematic program for achieving performance improvement and ensuring the quality of pharmaceutical services;

2. Ensuring that the pharmacy employs an adequate number of qualified personnel commensurate with the size and scope of services provided by the pharmacy and sufficient to ensure adequate levels of quality patient care services. Drug dispensing by nonpharmacists shall be minimized and eliminated wherever possible;

3. Ensuring the availability of any equipment and references necessary for the particular practice of pharmacy;

4. Ensuring that a pharmacist performs therapeutic drug monitoring and drug use evaluation;

5. Ensuring that a pharmacist provides drug information to other health professionals and to patients;

6. Dispensing drugs to patients, including the packaging, preparation, compounding, and labeling functions performed by pharmacy personnel;

7. Delivering drugs to the patient or the patient's agent;

8. Ensuring that patient medication records are maintained as specified in rule 7.10(124,155A);

9. Training pharmacy technicians and supportive personnel;

10. Ensuring adequate and appropriate pharmacist oversight and supervision of pharmacy technicians and supportive personnel;

11. Procuring and storing prescription drugs and devices and other products dispensed from the pharmacy;

12. ~~Disposing of~~ Distributing and distributing disposing of drugs from the pharmacy;

13. Maintaining records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations;

14. Establishing and maintaining effective controls against the theft or diversion of prescription drugs, controlled substances, and records for such drugs;

15. Preparing a written operations manual governing pharmacy functions; periodically reviewing and revising those policies and procedures to reflect changes in processes, organization, and other pharmacy functions; and ensuring that all pharmacy personnel are familiar with the contents of the manual;

16. Ensuring the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy.

ITEM 3. Amend subrule 7.6(2) as follows:

**7.6(2)** Access when pharmacist absent. *When the pharmacist is absent from the facility, the pharmacy is closed.* Policies and procedures shall be established which that identify who will have access to the pharmacy when the pharmacist is absent from the facility *pharmacy is closed* and the procedures to be followed for obtaining drugs, devices, and chemicals to fill an emergent need during that the pharmacist's absence. ~~When the pharmacist is absent from the facility, the pharmacy is closed.~~

a. *The pharmacist in charge may designate pharmacy technicians who may be present in the pharmacy to perform technical and nontechnical functions designated by the pharmacist in charge. Activities identified in paragraph "d" of this subrule may not be performed when the pharmacy is closed.*

b. *If the pharmacist in charge has authorized the presence in the pharmacy of a pharmacy technician to perform designated functions when the pharmacy is closed, the technician may assist another authorized, licensed health care professional to locate a drug or device pursuant to an emergent need. The pharmacy technician may not dispense or deliver the drug, chemical, or device to the health care professional. The health care professional shall comply with established policies and procedures for obtaining drugs, devices, and chemicals when the pharmacy is closed. The health care professional shall not ask or expect the pharmacy technician to verify that the appropriate drug, chemical, or device has been obtained from the pharmacy. The health care professional obtaining the drug, chemical or device shall seek verification from another health care professional pursuant to hospital policies and procedures.*

c. *A pharmacy technician who is present in the pharmacy when the pharmacy is closed shall prepare and maintain in the pharmacy a log identifying each period of time that the technician worked in the pharmacy while the pharmacy was closed and identifying each activity performed during that time period. Each record logged shall be dated and each daily record shall be signed by the pharmacy technician who prepared the record. The log shall be periodically reviewed by the pharmacist in charge.*

## PHARMACY EXAMINERS BOARD[657](cont'd)

*d. Activities which shall not be performed by pharmacy technicians when the pharmacist is absent from the facility include:*

*(1) Dispensing, delivering, or distributing any prescription drugs or devices to patients or others, including health care professionals, prior to pharmacist verification. Verification by a nurse or other licensed health care professional may not supplant verification by a pharmacist.*

*(2) Providing the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.*

*(3) Conducting prospective drug use review or evaluating a patient's medication record for purposes identified in rule 657—8.21(155A).*

*(4) Providing patient counseling, consultation, or drug information.*

*(5) Making decisions that require a pharmacist's professional judgment such as interpreting or applying information.*

*(6) Preparing compounded drug products for immediate administration by other hospital staff or health care professionals and without verification by a pharmacist.*

ITEM 4. Amend subrule **7.8(1)**, paragraph **"b,"** as follows:

b. Pharmacy personnel shall, except as specified in policies and procedures, prepare all sterile products, ~~including chemotherapy injections, continuous and intermittent intravenous preparations, and irrigation solutions,~~ in conformance with 657—8.30(126,155A).

ITEM 5. Amend subrule 7.8(3) as follows:

**7.8(3)** Medication orders. ~~There shall be no manual or electronic transcribing of medication orders by nursing or clerical staffs except for their own records. A pharmacist shall receive a copy of the original medication order for review except when the prescriber directly enters the medication order into an electronic medical record system or when the prescriber issues a verbal medication order directly to a nurse who enters the order into an electronic medical record system. If an individual other than the prescriber enters a medication order into an electronic record system, the pharmacist shall review and verify the entry against the original order before the drug is dispensed, except for emergency use, when the pharmacy is closed, when the original order is a verbal order from the prescriber to the nurse, or as provided in rule 7.7(155A). When the pharmacy is closed, a registered nurse may enter a medication order into an electronic system for the purpose of creating an electronic medication administration record and a pharmacist shall verify the entry against the original medication order as soon as practicable. Hospitalwide and pharmacy stand-alone computer systems shall be secure against unauthorized entry. The use of abbreviations and chemical symbols on medication orders shall be discouraged but, if used, shall be limited to abbreviations and chemical symbols approved by the appropriate patient care committee. All systems shall provide for review and verification by the pharmacist of the prescriber's original order before the drug is dispensed except for emergency use or when the pharmacy is closed, or as provided in rule 7.7(155A).~~

**ARC 4874B****PHARMACY EXAMINERS  
BOARD[657]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendment was approved at the January 26, 2006, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment establishes criteria for collaborative drug therapy management between Iowa physicians and pharmacists in community and hospital practice settings. In the community setting, a pharmacist and a physician may execute a protocol to define collaborative drug therapy management with patients who consent to the collaborative practice. In the hospital setting, a hospital pharmacy and therapeutics committee may establish a protocol authorizing hospital pharmacists to perform drug therapy management for hospital inpatients or patients in a hospital's clinics. The amendment identifies the requirements of community and hospital practice protocols.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on March 8, 2006. Such written materials should be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@iowa.gov).

There will be a public hearing held jointly by the Board of Medical Examiners and the Board of Pharmacy Examiners on March 8, 2006, at 3 p.m. at the office of the Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa. Interested persons may present their views either orally or in writing.

This amendment is intended to implement Iowa Code sections 155A.2 and 155A.13.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt **new** rule 657—8.34(155A) as follows:

**657—8.34(155A) Collaborative drug therapy management.** An authorized pharmacist may only perform collaborative drug therapy management pursuant to protocol with a physician pursuant to the requirements of this rule. The physician retains the ultimate responsibility for the care of the patient. The pharmacist is responsible for all aspects of drug therapy management performed by the pharmacist.

## PHARMACY EXAMINERS BOARD[657](cont'd)

**8.34(1) Definitions.**

"Authorized pharmacist" means an Iowa-licensed pharmacist whose license is in good standing and who meets the drug therapy management criteria defined in this rule.

"Board" means the board of pharmacy examiners.

"Collaborative drug therapy management" means participation by an authorized pharmacist and a physician in the management of drug therapy pursuant to a written community practice protocol or a written hospital practice protocol.

"Collaborative practice" means that a physician may delegate aspects of drug therapy management for the physician's patients to an authorized pharmacist through a community practice protocol. "Collaborative practice" also means that a hospital pharmacy and therapeutics (P&T) committee may authorize hospital pharmacists to perform drug therapy management for inpatients and hospital clinic patients through a hospital practice protocol.

"Community practice protocol" means a written, executed agreement entered into voluntarily between an authorized pharmacist and a physician establishing drug therapy management for one or more of the pharmacist's and physician's patients residing in a community setting. A community practice protocol shall comply with the requirements of subrule 8.34(2).

"Community setting" means a location outside a hospital inpatient, acute care setting or a hospital clinic setting. A community setting may include, but is not limited to, a home, group home, assisted living facility, correctional facility, hospice, or long-term care facility.

"Drug therapy management criteria" means one or more of the following:

1. Graduation from a recognized school or college of pharmacy with a doctor of pharmacy (Pharm.D.) degree;
2. Certification by the Board of Pharmaceutical Specialties (BPS);
3. Certification by the Commission for Certification in Geriatric Pharmacy (CCGP);
4. Successful completion of a National Institute for Standards in Pharmacist Credentialing (NISPC) disease state management examination and credentialing by the NISPC;
5. Successful completion of a pharmacy residency program accredited by the American Society of Health-System Pharmacists (ASHP); or
6. Approval by the board of pharmacy examiners.

"Hospital clinic" means an outpatient care clinic operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

"Hospital pharmacist" means an Iowa-licensed pharmacist who meets the requirements for participating in a hospital practice protocol as determined by the hospital's P&T committee.

"Hospital practice protocol" means a written plan, policy, procedure, or agreement that authorizes drug therapy management between hospital pharmacists and physicians within a hospital and the hospital's clinics as developed and determined by the hospital's P&T committee. Such a protocol may apply to all pharmacists and physicians at a hospital or the hospital's clinics or only to those pharmacists and physicians who are specifically recognized. A hospital practice protocol shall comply with the requirements of subrule 8.34(3).

"IBME" means the Iowa board of medical examiners.

"Physician" means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy. A physician who executes a written protocol with an authorized pharmacist shall supervise

the pharmacist's activities involved in the overall management of patients receiving medications or disease management services under the protocol. The physician may delegate only drug therapies that are in areas common to the physician's practice.

**8.34(2) Community practice protocol.**

a. An authorized pharmacist shall engage in collaborative drug therapy management with a physician only under a written protocol that has been identified by topic and has been submitted to the board or a committee authorized by the board. A protocol executed after July 1, 2008, will no longer be required to be submitted to the board; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBME.

b. The community practice protocol shall include:

(1) The name, signature, date, and contact information for each authorized pharmacist who is a party to the protocol and is eligible to manage the drug therapy of a patient. If more than one authorized pharmacist is a party to the agreement, the pharmacists shall work for a single licensed pharmacy and a principal authorized pharmacist shall be designated in the protocol.

(2) The name, signature, date, and contact information for each physician who may prescribe drugs and is responsible for supervising a patient's drug therapy management. The physician who initiates a protocol shall be considered the main caregiver for the patient respective to that protocol and shall be noted in the protocol as the principal physician.

(3) The name and contact information of the principal physician and the principal authorized pharmacist who are responsible for development, training, administration, and quality assurance of the protocol.

(4) A detailed written protocol pursuant to which the authorized pharmacist will base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration, and route of administration of the drug authorized by the patient's physician. The protocol shall not authorize the pharmacist to change a Schedule II drug or to initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the pharmacist to obtain or to conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions, or determine if the patient should be referred back to the patient's physician for follow-up.

4. Patient activities. The protocol may authorize the pharmacist to monitor specific patient activities.

(5) Procedures for securing the patient's written consent. If the patient's consent is not secured by the physician, the authorized pharmacist shall secure such and notify the patient's physician within 24 hours.

(6) Circumstances that shall cause the authorized pharmacist to initiate communication with the physician including but not limited to the need for new prescription orders and reports of the patient's therapeutic response or adverse reaction.

## PHARMACY EXAMINERS BOARD[657](cont'd)

(7) A detailed statement identifying the specific drugs, laboratory tests, and physical findings upon which the authorized pharmacist shall base drug therapy management decisions.

(8) A provision for the collaborative drug therapy management protocol to be reviewed, updated, and reexecuted or discontinued at least every two years.

(9) A description of the method the pharmacist shall use to document the pharmacist's decisions or recommendations for the physician.

(10) A description of the types of reports the authorized pharmacist is to provide to the physician and the schedule by which the pharmacist is to submit these reports. The schedule shall include a time frame within which a pharmacist shall report any adverse reaction to the physician.

(11) A statement of the medication categories and the type of initiation and modification of drug therapy that the physician authorizes the pharmacist to perform.

(12) A description of the procedures or plan that the pharmacist shall follow if the pharmacist modifies a drug therapy.

(13) Procedures for record keeping, record sharing, and long-term record storage.

(14) Procedures to follow in emergency situations.

(15) A statement that prohibits the authorized pharmacist from delegating drug therapy management to anyone other than another authorized pharmacist who has signed the applicable protocol.

(16) A statement that prohibits a physician from delegating collaborative drug therapy management to any unlicensed or licensed person other than another physician or an authorized pharmacist.

(17) A description of the mechanism for the pharmacist and the physician to communicate with each other and for documentation by the pharmacist of the implementation of collaborative drug therapy.

c. Collaborative drug therapy management is valid only when initiated by a written protocol executed by at least one authorized pharmacist and at least one physician.

d. The collaborative drug therapy protocol must be filed with the board, kept on file in the pharmacy, and be made available to the board and the IBME upon request. After July 1, 2008, protocols shall no longer be filed with the board but shall be maintained in the pharmacy and made available upon request of the board or the IBME.

e. A physician may terminate or amend the collaborative drug therapy management protocol with an authorized pharmacist if the physician notifies, in writing, the pharmacist and the board. Notification shall include the name of the authorized pharmacist, the desired change, and the proposed effective date of the change. After July 1, 2008, the physician shall no longer be required to notify the board of changes in a protocol but the written notification shall be maintained in the pharmacy and made available upon request of the board or the IBME.

f. The physician or pharmacist who initiates a protocol with a patient is responsible for securing a patient's written consent to participate in drug therapy management and for transmitting a copy of the consent to the other party within 24 hours. The consent shall indicate which protocol is involved. Any variation in the protocol for a specific patient shall be communicated to the other party at the time of securing the patient's consent. The patient's physician shall maintain the patient consent in the patient's medical record.

### 8.34(3) Hospital practice protocol.

a. A hospital's P&T committee shall determine the scope and extent of collaborative drug therapy management

practices that may be conducted by the hospital's pharmacists.

b. Collaborative drug therapy management within a hospital setting or the hospital's clinic setting is valid only when approved by the hospital's P&T committee.

c. The hospital practice protocol shall include:

(1) The names or groups of pharmacists and physicians who are authorized by the P&T committee to participate in collaborative drug therapy management.

(2) A plan for development, training, administration, and quality assurance of the protocol.

(3) A detailed written protocol pursuant to which the hospital pharmacist shall base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Medication orders and prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration, and route of administration of the drug authorized by the physician. The protocol shall not authorize the hospital pharmacist to change a Schedule II drug or to initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the hospital pharmacist to obtain or to conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the hospital pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions, or determine if the patient should be referred back to the physician for follow-up.

(4) Circumstances that shall cause the hospital pharmacist to initiate communication with the patient's physician including but not limited to the need for new medication orders and prescription drug orders and reports of a patient's therapeutic response or adverse reaction.

(5) A statement of the medication categories and the type of initiation and modification of drug therapy that the P&T committee authorizes the hospital pharmacist to perform.

(6) A description of the procedures or plan that the hospital pharmacist shall follow if the hospital pharmacist modifies a drug therapy.

(7) A description of the mechanism for the hospital pharmacist and the patient's physician to communicate and for the hospital pharmacist to document implementation of the collaborative drug therapy.

## ARC 4883B

### PROFESSIONAL LICENSURE DIVISION[645]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners hereby gives Notice of In-

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

tended Action to amend Chapter 40, "Administrative and Regulatory Authority for the Board of Chiropractic Examiners," and Chapter 45, "Discipline for Chiropractic Physicians," Iowa Administrative Code.

The proposed amendments provide the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening and to retain licensure overpayments.

Any interested person may make written comments on the proposed amendments no later than March 8, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on March 8, 2006, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 151 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—40.1(17A)** by adding the following **new** definition in alphabetical order:

"Overpayment" means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

ITEM 2. Adopt **new** rule 645—45.5(151) as follows:

**645—45.5(151) Order for mental, physical, or clinical competency examination or alcohol or drug screening.** A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

**45.5(1)** Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time which the licensee has to complete the examination.
- e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.
- f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.
- g. A requirement that the licensee communicate with the board regarding the status of the examination.
- h. A concise statement of the facts relied on by the board to order the evaluation.

**45.5(2)** Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

**45.5(3)** Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

**45.5(4)** Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

**45.5(5)** Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

**45.5(6)** Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

**45.5(7)** Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

**ARC 4885B**

## PROFESSIONAL LICENSURE DIVISION[645]

### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners hereby gives Notice of Intended Action to amend Chapter 43, "Practice of Chiropractic Physicians," Iowa Administrative Code.

The proposed amendment clarifies and modifies the utilization and cost control review (UCCR) committee process.

Any interested person may make written comments on the proposed amendment no later than March 8, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

A public hearing will be held on March 8, 2006, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 151 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 645—43.3(514F) as follows:

**645—43.3(514F) Utilization and cost control review.**

**43.3(1)** The board shall establish utilization and cost control review (UCCR) committee(s). *A UCCR committee shall be established by approval of the board upon a showing that the committee meets the requirements of this rule. The names name of the each committee and a list of committee members shall be on file with the board and available to the public. The designation of the committee members shall be reviewed annually. As a condition of board approval, each committee shall agree to submit to the board an annual report which meets the requirements of this rule.*

**43.3(2)** ~~Members~~ Each member of the a UCCR committee shall:

- a. Hold a current license in Iowa.
- b. Have practiced chiropractic in the state of Iowa for a minimum of five years prior to appointment.
- c. Be actively involved in a chiropractic practice during the term of appointment as a UCCR committee member.
- d. Have no pending board disciplinary actions ~~action, or discipline~~ no disciplinary action taken during the three years prior to appointment, and no discipline disciplinary action pending or taken during the period of appointment.
- e. Have no malpractice awards granted against the appointed committee member judgment awarded or settlement paid during the three years prior to appointment or during the period of appointment.
- f. Not assist in the review or adjudication of claims in which the committee member may reasonably be presumed to have a conflict of interest.
- g. Have completed a utilization review course that has been previously approved by the board.

**43.3(3)** Procedures for utilization and cost control review. A request for review may be made to the board UCCR committee by any person governed by the various chapters of Title XIII, subtitle 1, of the Iowa Code, self-insurers for health care benefits to employees, other third-party payers, chiropractic patients or licensees.

a. There shall be a reasonable fee, as established by the board UCCR committee and approved by the board, for services rendered, which will be made payable directly to the UCCR committee that conducts the review. The committee Each UCCR committee approved by the board shall make a yearly accounting to the board.

b. A request for service shall be submitted to the executive director of the UCCR committee on an approved a submission form approved by the board, and shall be accompanied by four the number of copies of all information required by the UCCR committee. All references to the identification and location of patient and doctor shall be deleted and prepared for blind review by the executive director of the UCCR

committee. The information shall be forwarded to the UCCR committee.

c. The UCCR committee shall respond in writing to the parties involved with its findings and recommendations within 90 days of the date the request for review was submitted. The committee shall review the appropriateness of levels of treatment and give an opinion as to the reasonableness of charges for diagnostic or treatment services rendered as requested. The UCCR committee shall submit a quarterly report of its activities to the board. The UCCR committee shall meet at least annually with the board chairperson or the board chairperson's designee.

**43.3(4)** Types of cases reviewed shall include:

- a. Utilization.
  - (1) Frequency of treatment;
  - (2) Amount of treatment;
  - (3) Necessity of service;
  - (4) Appropriateness of treatment.
- b. Usual and customary service.

**43.3(5)** Criteria for review may include but are not limited to:

- a. Was diagnosis compatible and consistent with information?
- b. Were X-ray and other examination procedures adequate, or were they insufficient or nonrelated unrelated to history or diagnosis?
- c. Were clinical records adequate, complete, and of sufficient frequency?
- d. Was treatment consistent with diagnosis?
- e. Was treatment program consistent with scientific knowledge and with academic and clinical training provided in accredited chiropractic colleges?
- f. Were charges reasonable and customary for the service?

**43.3(6)** Confidentiality. Members of the UCCR committee shall observe the requirements of confidentiality imposed by Iowa Code chapter 272C.

**43.3(7)** Annual report. Each UCCR committee shall annually submit a report to the board, and shall meet to review that report with the board chairperson or designee upon the board's request. The annual report shall include the following information:

- a. The fee to be charged the party requesting UCCR review.
- b. A report regarding the activities of the committee for the past year, including a report regarding each review conducted, the conclusions reached regarding that review, and any recommendations made following the review.

**43.3(7 8)** Action of the UCCR committee does not constitute an action of the board. A conclusion or recommendation, or both, made by a UCCR committee does not constitute a decision of the board.

**ARC 4886B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners hereby gives Notice of Intended Action to amend Chapter 44, “Continuing Education for Chiropractic Physicians,” Iowa Administrative Code.

The proposed amendments provide for chiropractors to obtain all continuing education hours by independent study if they choose.

Any interested person may make written comments on the proposed amendments no later than March 8, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on March 8, 2006, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 151 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **44.3(2)**, paragraph “a,” subparagraph (1), as follows:

(1) At least 36 hours of continuing education credit obtained from a program that directly relates to clinical case management of chiropractic patients. Beginning with the July 1, 2006, to June 30, 2008, renewal cycle, these hours shall be earned by completing a program in which an instructor conducts the class in a manner that permits either in-person or live-or-real-time electronic interaction with the participants.

ITEM 2. Amend subrule **44.3(2)**, paragraphs “c” and “d,” as follows:

c.—Beginning with the July 1, 2006, to June 30, 2008, renewal cycle, a maximum of 24 hours per biennium will be allowed for independent study.

d.c. Continuing education may not be obtained by completing or teaching classes in basic anatomy and physiology or undergraduate level coursework.

**ARC 4867B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Nursing Home Administrators hereby gives Notice of Intended Action to amend Chapter 140, “Administrative and Regulatory Authority for the Board of Examiners for Nursing Home Administrators,” and Chapter 144, “Discipline for Nursing Home Administrators,” Iowa Administrative Code.

The proposed amendments provide the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening and to retain licensure overpayments.

Any interested person may make written comments on the proposed amendments no later than March 8, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on March 8, 2006, from 10 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 155 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—140.1(17A,155)** by adding the following **new** definition in alphabetical order:

“Overpayment” means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

ITEM 2. Adopt **new** rule 645—144.5(155) as follows:

**645—144.5(155) Order for mental, physical, or clinical competency examination or alcohol or drug screening.** A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee’s expense.

**144.5(1)** Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

a. A description of the type of examination to which the licensee must submit.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.

c. The time period in which the licensee must schedule the required examination.

d. The amount of time which the licensee has to complete the examination.

e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.

f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.

g. A requirement that the licensee communicate with the board regarding the status of the examination.

h. A concise statement of the facts relied on by the board to order the evaluation.

**144.5(2) Alternatives.** Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

**144.5(3) Objection to order.** A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

**144.5(4) Closed hearing.** Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

**144.5(5) Order and reports confidential.** An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

**144.5(6) Admissibility.** In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

**144.5(7) Failure to submit.** Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

**ARC 4884B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Respiratory Care Examiners hereby gives Notice of Intended Action to amend Chapter 260, "Administrative and Regulatory Authority for the Board of Respiratory Care Examiners," Iowa Administrative Code.

The proposed amendment provides the Board the ability to retain licensure overpayments of less than \$10.

Any interested person may make written comments on the proposed amendment no later than April 4, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on April 4, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 152B and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule **645—260.1(17A)** by adding the following **new** definition in alphabetical order:

"Overpayment" means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

**ARC 4866B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby gives Notice of Intended Action to amend Chapter 325, "Administrative and Regulatory Authority for the Board of Physician Assis-

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

tant Examiners,” Chapter 326, “Licensure of Physician Assistants,” and Chapter 329, “Discipline for Physician Assistants,” Iowa Administrative Code.

The proposed amendments provide the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening; add the requirement for physician assistants to notify the Board to identify the physician assistants’ supervising physicians at time of license reactivation; and provide the Board the ability to retain licensure overpayments.

Any interested person may make written comments on the proposed amendments no later than March 8, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on March 8, 2006, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 148C and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—325.1(17A)** by adding the following **new** definition in alphabetical order:

“Overpayment” means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

ITEM 2. Amend subrule **326.8(1)** by adopting **new** paragraph “d” as follows:

d. At the time of license reactivation.

ITEM 3. Amend rule **645—329.3(147,272C)**, numbered paragraph “7,” as follows:

7. Order a ~~physical or mental~~, *physical, or clinical competency evaluation examination*, or order alcohol and drug screening within a time specified by the board.

ITEM 4. Adopt **new** rule 645—329.5(148C) as follows:

**645—329.5(148C) Order for mental, physical, or clinical competency examination or alcohol or drug screening.** A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee’s expense.

**329.5(1) Content of order.** A board order for a mental, physical, or clinical competency examination shall include the following items:

a. A description of the type of examination to which the licensee must submit.

b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.

c. The time period in which the licensee must schedule the required examination.

d. The amount of time which the licensee has to complete the examination.

e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.

f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.

g. A requirement that the licensee communicate with the board regarding the status of the examination.

h. A concise statement of the facts relied on by the board to order the evaluation.

**329.5(2) Alternatives.** Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

**329.5(3) Objection to order.** A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee’s confidentiality.

**329.5(4) Closed hearing.** Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

**329.5(5) Order and reports confidential.** An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

**329.5(6) Admissibility.** In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians’ or health care providers’ testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

**329.5(7) Failure to submit.** Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

**ARC 4904B****PUBLIC SAFETY  
DEPARTMENT[661]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 100.35, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 5, “Fire Marshal,” Iowa Administrative Code.

Iowa Code chapter 100 assigns broad authority to the Fire Marshal to adopt rules establishing fire safety requirements which apply to a broad range of occupancies across the state. Numerous adoptions of individual rules over a 50-year period have resulted in a set of rules which is now quite complex. An effort is underway to evaluate all Fire Marshal rules with a view to enacting a new set of integrated standards; however, this effort will take some time to complete. Meanwhile, various inconsistencies and errors have been identified in the current rules and this rule making is intended to address those problems.

Following are the major items covered in these amendments:

- Several references remain in 661—Chapter 5 to the “effective date of these rules.” These references have been corrected to dates certain.
- The rule making that resulted in the adoption of provisions of the Life Safety Code as the general exit requirements in the Fire Marshal rules involved rescinding and reserving several rules. An inadvertent result of rescinding these rules is that there are a number of cross references in remaining rules to the rules that have been rescinded. The rule making undertaken here corrects this problem by restoring the requirements embodied in the rescinded rules. This is accomplished by modifying the language in rules which contain cross references to rules previously rescinded, to reflect and clarify requirements.
- An error in a recent adoption of rules for assembly occupancies has been corrected.
- A reference to the address of the Fire Marshal Division has been updated.
- Rules regarding obtaining records from the Fire Marshal Division have been updated.
- Several definitions have been added or updated for clarification.
- Existing references to various editions of standards of the National Fire Protection Association have been corrected to remove inconsistencies.

A public hearing on these proposed amendments will be held on March 24, 2006, at 9:30 a.m. in the conference room of the Fire Marshal Division, 401 SW 7th Street, Suite N, Des Moines, Iowa 50309. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail; by telephone at (515)281-5524; or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office by 4:30 p.m. on March 24, 2006.

These amendments were also Adopted and Filed Emergency and became effective February 1, 2006. The emergency adoption of these amendments is published herein as **ARC 4903B**. Iowa Code section 100.35 requires that the Fire Marshal adopt rules only after a public hearing. A public hearing on the emergency adoption was held on January 6, 2006. It should be noted that this hearing was not the same as an “opportunity for oral presentation” described in Iowa Code chapter 17A, but was held pursuant to Iowa Code section 100.1, subsection 5.

These amendments are intended to implement Iowa Code sections 100.1 and 100.35.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

**ARC 4873B****RACING AND GAMING  
COMMISSION[491]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Iowa Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 4, “Contested Cases and Other Proceedings,” Chapter 9, “Harness Racing,” Chapter 10, “Thoroughbred and Quarter Horse Racing,” Chapter 11, “Gambling Games,” and Chapter 12, “Accounting and Cash Control,” Iowa Administrative Code.

Item 1 reestablishes a subrule that had been removed by mistake.

Items 2 through 16 update existing rules to correspond with the national uniform rules of racing.

Items 17 through 22 clarify intent, change requirements, or conform to technical compliance standards.

Any person may make written suggestions or comments on the proposed amendments on or before March 7, 2006. Written material should be directed to the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on March 7, 2006, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

## RACING AND GAMING COMMISSION[491](cont'd)

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 491—4.4(99D,99F) by adding the following **new** subrule:

**4.4(8)** A gaming representative may summarily suspend an occupational licensee in accordance with rule 491—4.47(17A).

ITEM 2. Amend subrule **9.2(10)**, paragraph “e,” subparagraph (2), as follows:

(2) All rails must be constructed of materials designed to withstand the impact of a horse ~~running at a gallop~~.

ITEM 3. Amend subrule **9.4(5)**, paragraph “c,” as follows:

c. Posting of entries. Upon the completion of the draw each day, the racing secretary shall post a list of entries in a conspicuous location in the racing office and make the list available to the ~~media~~ public.

ITEM 4. Rescind and reserve subrule **9.4(8)**, paragraph “b,”

ITEM 5. Amend subrule **9.5(1)**, paragraph “a,” subparagraph (11), as follows:

(11) Ensuring that, at the time of arrival at the facility, each horse in the trainer's care is accompanied by a valid health certificate *and evidence of a negative Coggins test*, which shall be filed with the racing secretary.

ITEM 6. Amend subrule **9.6(1)**, paragraph “1,” as follows:

1. The horse appears on the starters' list, steward's list, ~~paddock list~~, or veterinarian's list;

ITEM 7. Rescind subrule **9.6(1)**, paragraph “w.”

ITEM 8. Amend subrule **9.6(10)**, paragraph “b,” as follows:

b. Posting of overnight conditions. At extended pari-mutuel meetings, condition books will be prepared and races may be divided or substituted only when regularly scheduled races fail to fill ~~except where racing is conducted less than five days a week~~. Books containing at least three days' racing programs will be available to horsemen at least 24 hours prior to closing declarations on any race program contained. When published, the conditions must be clearly stated and not printed as TBA—To Be Announced. The racing secretary shall forward copies of each condition book and overnight sheet to the commission and U.S.T.A. office as soon as ~~it is~~ they are available to the horsemen.

ITEM 9. Amend subrule **9.6(18)**, paragraph “a,” subparagraph (11), as follows:

(11) Horses omitted through error. Drawings shall be final unless there is conclusive evidence that a horse properly declared was omitted from the race through the error of the facility or its agent or employee, in which event the horse shall be added to the race but given the last post position, provided the error is discovered prior to scratch time or the printing of the program, whichever is sooner. However, in the case of early closers ~~of more than \$10,000~~ and stake and futurity races, the race shall be redrawn. ~~This shall not apply at extended pari-mutuel meetings in overnight events.~~

ITEM 10. Amend subrule **9.6(18)**, paragraph “e,” subparagraph (2), as follows:

(2) When a horse is racing for the first time in the current year, the date of the first *declaration successful qualifying race* shall be considered its last race date and preference shall be applied accordingly.

ITEM 11. Amend subrule **9.6(18)**, paragraph “g,” as follows:

g. Driver. Declarations shall state who shall drive the horse and give the driver's colors. Drivers shall be named at the time of the draw after which no driver may be changed without good cause and permission of the steward(s). *All drivers must be changed by scratch time*. When a nominator starts two or more horses, the stewards shall approve or disapprove the second and third drivers.

ITEM 12. Amend subrule **9.6(19)**, paragraph “a,” subparagraph (2), as follows:

(2) Scoring. After one or two preliminary warming up scores, the starter shall notify the drivers to fasten their ~~helmet chin straps~~ *helmets* and come to the starting gate. During or before the parade, the drivers must be informed as to the number of scores permitted.

ITEM 13. Amend subrule **9.6(20)**, paragraph “s,” as follows:

s. Sulky. Only sulkies of the conventional dual-shaft and dual-hitch type shall be permitted to be used in any races. A conventional-type sulky is one having two shafts that must be parallel to and securely hitched on each side of the horse. No point of hitch or any part of a shaft shall be above a horizontal level equal to the lowest point of the horse's back. ~~Shafts must be hooded separately on each side.~~

ITEM 14. Amend subrule 10.2(9) as follows:

**10.2(9)** Helmets and vests. A facility shall not allow any person to ~~exercise any horse on horseback~~ on facility ~~premises~~ grounds unless that person is wearing a protective helmet and safety vest of a type approved by the commission.

ITEM 15. Amend subrule **10.4(5)**, paragraph “f,” as follows:

f. Naming/engaging of riders. Riders must be named at the time of entry ~~or no later than scratch time~~. Before naming any rider, the trainer, owner, or other person authorized must first engage the services of the rider and state on the entry or to the clerk of scales whether it is a first or second call. Riders properly engaged must fulfill their engagements as required in 10.5(2)“1.”

ITEM 16. Amend subrule **10.4(17)**, paragraph “g,” as follows:

g. A horse placed on the veterinarian's list, bleeders exempt, may be allowed to enter only after it has been removed from the list by the commission veterinarian. Requests for the removal of any horse from the veterinarian's list will be accepted only after three calendar days from the placing of the horse on the veterinarian's list have elapsed. Removal from the list will be at the discretion of the commission veterinarian, who may require satisfactory workouts or examinations to adequately demonstrate that the problem that caused the horse to be placed on the list has been rectified. *Horses that are entered to race and then placed on the veterinarian's list for any reason will not be allowed to enter a race for a minimum of three calendar days beginning the day after the horse was scheduled to race.*

## RACING AND GAMING COMMISSION[491](cont'd)

ITEM 17. Rescind subrule **11.9(2)**, paragraph “b,” and insert in lieu thereof the following **new** paragraph:

b. A slot machine game shall have a probability of obtaining the highest single advertised payout, which must statistically occur at least once in 50,000,000 games.

ITEM 18. Rescind subrule 11.9(5) and insert in lieu thereof the following **new** subrule:

**11.9(5)** Posting of the average theoretical payout percentage. The average theoretical payout percentage, as defined by subrule 11.9(2), of the slot machine games available for play to the public shall be posted at the main casino entrance, cashier cages, and slot booths. The average shall be calculated as the sum of the theoretical payout percentage of all slot machine games available for play divided by the total number of slot machine games available for play. A slot machine game available for play shall mean a game, either the only game or one of a number of games in a slot machine, which remains accessible to a patron for play on the gaming floor. For the purpose of this calculation, each specific increment rate for an individual in-house progressive jackpot may be added to the theoretical payout percentage of each slot game which has that specific in-house progressive jackpot available for play, provided the posting states that the calculation includes progressive jackpot increment rates.

ITEM 19. Rescind subrule 11.10(2) and insert in lieu thereof the following **new** subrule:

**11.10(2)** Software requirements—random number generator. Each slot machine must have a random number generator to determine the results of the game symbol selections or production of game outcomes. The selection shall:

- a. Be statistically independent.
- b. Conform to the desired random distribution.
- c. Pass various recognized statistical tests.
- d. Be unpredictable.
- e. Have a testing confidence level of 95 percent.

ITEM 20. Amend subrule **11.10(4)**, last unnumbered paragraph, as follows:

No slot machine may have a mechanism ~~by which an error that~~ will cause the electronic accounting meters to automatically clear ~~due to an error~~. Clearing of the electronic accounting meters may only be completed after notification ~~and approval by is filed with~~ a commission representative. All meter readings must be recorded both before and after the electronic accounting meter is cleared.

ITEM 21. Rescind subrule 11.12(2) and insert in lieu thereof the following **new** subrule:

**11.12(2)** Progressive controllers. The reset or base value and the rate of increment of a progressive jackpot game must be filed with a commission representative prior to implementation. A reset or base value must equal or exceed the equivalent nonprogressive jackpot payout.

ITEM 22. Rescind subrule 12.14(4) and insert in lieu thereof the following **new** subrule:

**12.14(4)** For a slot machine jackpot in excess of \$100,000, a facility shall notify a commission representative in accordance with the immediate notification process established by subrule 5.4(5).

ARC 4887B

## REVENUE DEPARTMENT[701]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 425.37, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 73, “Property Tax Credit and Rent Reimbursement,” Iowa Administrative Code.

The proposed amendment to Chapter 73 adds new rule 701—73.34(425) to allow the Director to approve a claim for property tax credit or rent reimbursement if the facts indicate that not to do so would present a hardship for the claimant.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that the proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than March 20, 2006, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before March 7, 2006. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by March 10, 2006.

This amendment is intended to implement Iowa Code section 425.37.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

REVENUE DEPARTMENT[701](cont'd)

Amend 701—Chapter 73 by adding the following **new** rule:

**701—73.34(425) Unreasonable hardship.** In order to avoid any unreasonable hardship to a claimant, the director may review the facts and circumstances of the claim as set forth by the claimant. The director may investigate all factors related to the specific case as deemed appropriate by the director. If the director is satisfied that the claim qualifies as an undue hardship for the claimant, the claim will be approved by the director.

This rule is intended to implement Iowa Code section 425.37.

## ARC 4877B

### TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 8D.3, the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 7, “Authorized Use and Users,” and Chapter 12, “Rates and Rate Disputes,” Iowa Administrative Code.

The proposed amendments are designed to update the Iowa Telecommunications and Technology Commission’s rules to implement statutory changes made to Iowa Code chapter 8D pursuant to 2005 Iowa Acts, chapter 178, section 40 (Iowa Code Supplement section 8D.13(11)), and chapter 179, section 51 (Iowa Code Supplement section 8D.2(5)). These amendments change rule definitions to reflect changes in Iowa Code chapter 8D, add residents of state facilities as authorized network users, and change the category of expenses for fee allocation for telemedicine and federal government users. The proposed amendments clarify the Commission’s administrative rules and follow the changes made in Iowa Code chapter 8D.

Any interested person may comment either orally or in writing on the proposed amendments on or before March 7, 2006. Comments should be directed to Ron Koontz, Administrative Rules Coordinator, Iowa Telecommunications and Technology Commission, P.O. Box 587, Johnston, Iowa 50131-0587; telephone (515)725-4708; E-mail [ron.koontz@icn.state.ia.us](mailto:ron.koontz@icn.state.ia.us).

There will be a public hearing on March 7, 2006, at 1 p.m. in the Thompson Conference Room, Building W-4, Camp Dodge, Johnston, Iowa, at which time all interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Persons with special needs should contact the Commission prior to the hearing if accommodations are needed.

These amendments are intended to implement Iowa Code Supplement chapter 8D.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **751—7.1(8D)**, definition of “public agency,” as follows:

“Public agency” means a state agency, an institution under the control of the board of regents, the judicial department as provided in Iowa Code section 8D.13, subsection 17, a school corporation, a city library, a regional library as provided in Iowa Code chapter 256, a county library as provided in Iowa Code chapter 336, or a judicial district department of correctional services established in Iowa Code section 905.2 to the extent provided in Iowa Code section 8D.13, subsection 15, an agency of the federal government, or a U.S. Post Office which receives a federal grant for pilot and demonstration projects. “Public agency” also includes any homeland security or defense facility *or disaster response agency* established by the administrator of the homeland security and emergency management division of the department of public defense or the governor, or any facility connected with a security or defense system *or disaster response* as required by the administrator of the homeland security and emergency management division of the department of public defense or the governor.

ITEM 2. Amend rule **751—7.5(8D)** by adding the following **new** numbered paragraph “17”:

17. Persons under the care, control or custody of the department of corrections, judicial district department correctional services, the department of human services, or their agents serving persons under the care, control or custody of the agent.

ITEM 3. Amend rule 751—12.5(8D) as follows:

**751—12.5(8D) Rates for telemedicine and the federal government.** A fee established by the commission to be charged to a hospital licensed pursuant to Iowa Code chapter 135B, a physician clinic, or the federal government shall be at an appropriate rate so that, at a minimum, there is no state subsidy related to the costs of the connection to or use of the network related to such user. The fees charged for use of the network shall be based on the ongoing ~~operational costs~~ *expenses* of the network ~~only~~.

## ARC 4862B

### TRANSPORTATION DEPARTMENT[761]

#### Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement section 312.3C, the Secondary Road Fund Distribution Committee hereby gives Notice of Intended Action to adopt Chapter 102, “Secondary Road Fund Distribution Committee,” Iowa Administrative Code.

## TRANSPORTATION DEPARTMENT[761](cont'd)

2005 Iowa Acts, chapter 142, section 4, amended Iowa Code section 312.3C to require the Secondary Road Fund Distribution Committee to:

- Determine the methodology to be used for distribution of moneys in the secondary road fund and the farm-to-market road fund. The methodology shall be phased in over a five-year period, beginning July 1, 2006.
- Adopt rules to govern the determination and modification of the methodology to be used for distribution of moneys in the secondary road fund and the farm-to-market road fund.

The proposed rules adopt the initial formulas to be used for distribution of moneys in the secondary road fund and the farm-to-market road fund, provide for a five-year phase-in period, define the process by which the formulas can be changed, and describe the organization and operation of the Secondary Road Fund Distribution Committee. The initial formulas are those recommended in the report entitled "Final Report, Secondary Road Fund Distribution Advisory Committee, 2002 to 2005." This report was submitted to the General Assembly.

These rules do not provide for waivers. Waivers of the distribution formulas would be inappropriate. The rules provide an orderly procedure for revising the distribution formulas.

Any person or agency may submit written comments concerning these proposed rules or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Stuart Anderson, Office of Systems Planning, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; fax (515)233-7857; Internet E-mail address: [stuart.anderson@dot.iowa.gov](mailto:stuart.anderson@dot.iowa.gov).
5. Be received no later than March 7, 2006.

A meeting to hear requested oral presentations is scheduled for Thursday, March 9, 2006, at 10:30 a.m. in the Administration Building, First Floor South Conference Room, Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These rules are intended to implement Iowa Code Supplement section 312.3C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

Proposed rule-making action:

Adopt the following **new** chapter:

CHAPTER 102  
SECONDARY ROAD FUND  
DISTRIBUTION COMMITTEE

**761—102.1(312) Purpose.** The purpose of these rules is to adopt the initial formulas to be used for distribution of moneys in the secondary road fund and the farm-to-market road fund and to formalize the process by which the secondary road fund distribution committee will administer its duties.

**102.1(1)** Iowa Code Supplement section 312.3C creates a secondary road fund distribution committee and requires the committee to be comprised of representatives appointed by the president of the Iowa county engineers association, the president of the Iowa state association of county supervisors, and the department of transportation.

**102.1(2)** Iowa Code Supplement section 312.3C requires the secondary road fund distribution committee to:

- a. Determine the methodology to be used for distribution of moneys in the secondary road fund and the farm-to-market road fund. The methodology shall be phased in over a five-year period, beginning July 1, 2006.
- b. Adopt rules to govern the determination and modification of the methodology to be used for distribution of moneys in the secondary road fund and the farm-to-market road fund.

**102.1(3)** Iowa Code Supplement section 312.3B requires the Iowa county engineers association service bureau to annually compute secondary road fund and farm-to-market road fund distributions using the methodology determined by the secondary road fund distribution committee.

**761—102.2(312) Initial formulas.**

**102.2(1)** The secondary road fund distribution committee adopts the recommendations in the report entitled "Final Report, Secondary Road Fund Distribution Advisory Committee, 2002 to 2005" as the initial formulas to be used for distribution of moneys in the secondary road fund and the farm-to-market road fund to counties, beginning July 1, 2006. This report is on file with the department of transportation and is available on the Internet at the following address: <http://publications.iowa.gov/archive/00002456>. The report's recommendations contain one formula for distribution of secondary road funds and one formula for distribution of farm-to-market road funds and describe the components of each formula.

**102.2(2)** Each formula shall be phased in over a five-year period commencing July 1, 2006; during that time period, secondary road funds and farm-to-market road funds shall be distributed to counties as follows:

- a. Fiscal year 2007 – 80 percent needs-based methodology and 20 percent formula.
- b. Fiscal year 2008 – 60 percent needs-based methodology and 40 percent formula.
- c. Fiscal year 2009 – 40 percent needs-based methodology and 60 percent formula.
- d. Fiscal year 2010 – 20 percent needs-based methodology and 80 percent formula.
- e. Fiscal year 2011 – 100 percent formula.

"Needs-based methodology" means the methodology used for fiscal year 2006, pursuant to Iowa Code section 312.3, subsection 1, and Iowa Code section 312.5, as these statutes existed in the Code of Iowa, 2005.

"Formula" means the appropriate formula (secondary road fund or farm-to-market road fund) as set out in the recommendations adopted in subrule 102.2(1).

**761—102.3 and 102.4** Reserved.

**761—102.5(312) Composition and membership of the secondary road fund distribution committee.**

**102.5(1)** The secondary road fund distribution committee shall be composed of six county engineers, six county supervisors, and two representatives of the department of transportation.

**102.5(2)** The county engineers shall be appointed by the president of the Iowa county engineers association, the

## TRANSPORTATION DEPARTMENT[761](cont'd)

county supervisors shall be appointed by the president of the Iowa state association of county supervisors, and the department of transportation representatives shall be appointed by the department of transportation.

**102.5(3)** The county engineer members and the county supervisor members shall be selected according to the population of their counties, as follows:

a. Two county engineers and two county supervisors from large counties.

b. Two county engineers and two county supervisors from medium counties.

c. Two county engineers and two county supervisors from small counties.

**102.5(4)** To the extent possible, the committee shall be geographically diverse, and no county may have both an engineer and a supervisor as members simultaneously.

Year	County Engineer Members	County Supervisor Members	Initial Term Length	Initial Term Ending Date
CY 2006	Large county A	Small county A	1 year	12/31/2006
CY 2007	Medium county A	Medium county A	2 years	12/31/2007
CY 2008	Small county A	Large county A	3 years	12/31/2008
CY 2009	Large county B	Small county B	4 years	12/31/2009
CY 2010	Medium county B	Medium county B	5 years	12/31/2010
CY 2011	Small county B	Large county B	6 years	12/31/2011

The initial committee shall, by resolution and in accordance with this table, assign initial term ending dates to apply to its members.

**102.6(4)** As initial terms expire, the incumbents may be reappointed or replaced. Each new term shall be for a full six-year period.

**102.6(5)** If a committee member is unable to complete a term of office for any reason, a replacement member of the same class (county engineer or county supervisor) and from the same group (a large, medium or small county) shall be appointed to serve the balance of the term.

**102.6(6)** The committee shall select from its membership a chair and a vice-chair to serve one-year terms. The chair and vice-chair serve at the pleasure of the committee and may be elected to multiple terms as the committee deems appropriate. The vice-chair shall preside at a meeting in the absence of the chair.

**761—102.7(312) Committee meetings.** Committee meetings shall be held at the call of the chair or when two committee members so request. Committee meetings shall be conducted in accordance with Iowa Code chapter 21. Committee meetings may be held electronically, in accordance with Iowa Code section 21.8. The committee shall meet at least once annually.

**102.7(1)** Each county member is a voting member and is eligible to vote at every committee meeting the member attends. Attendance may include members who are present at the meeting electronically through a telephone conference call, an Iowa communications network connection or other electronic means deemed appropriate by the chair.

**102.7(2)** A minimum of eight voting members is required for a quorum. If a quorum is not present at a meeting, the meeting shall be rescheduled.

**102.7(3)** A majority of voting members shall be required to pass ordinary items of business.

**102.7(4)** A resolution to propose a new or modified secondary road fund distribution formula or farm-to-market road fund distribution formula shall require ten affirmative votes.

**102.5(5)** All county members shall be voting members. The department of transportation representatives shall be nonvoting members.

**761—102.6(312) Terms of office and rotation of seats.**

**102.6(1)** Committee members shall serve six-year terms; however, shorter terms shall apply to members of the initial committee, as described in subrule 102.6(3) below. Terms of office shall begin on January 1 in the year of appointment and expire on December 31 in the year of expiration. Members may be reappointed to serve consecutive terms.

**102.6(2)** Rotations shall be staggered so that no more than two county members are rotated off the committee in any single year.

**102.6(3)** The initial committee is the committee in existence on July 1, 2005. The terms of office and rotations of seats for members of the initial committee shall be as shown in the following table:

**102.7(5)** A resolution to adopt, amend or rescind administrative rules shall require ten affirmative votes.

**102.7(6)** In addition to the requirements of Iowa Code chapter 21, the chair shall post meeting agendas on the Iowa county engineers association Web site and the Iowa state association of county supervisors Web site and shall send copies of agendas to all county engineers and supervisors.

**102.7(7)** Minutes of each meeting shall be kept; the presiding chair shall be responsible for the minutes. Minutes of a meeting shall be presented to the committee for approval at its next meeting. The chair shall post approved minutes on the Iowa county engineers association Web site and the Iowa state association of county supervisors Web site and shall file the minutes with the office of systems planning of the department of transportation.

**761—102.8 and 102.9** Reserved.

**761—102.10(312) Considerations for a new or modified distribution formula.** A distribution formula that is proposed in accordance with rule 761—102.11(312) should substantially meet the following objectives:

1. Funding levels to counties should be relatively stable, with only small changes occurring from year to year.

2. The formula should be able to factor in changes in population, mileages, the centerline lineal feet of bridges, and traffic levels as they occur over time, without needing to be revised.

**761—102.11(312) Process for approval of a new or modified distribution formula.**

**102.11(1)** Proposals to adopt a new or modified distribution formula may be initiated by the committee itself or by the executive board of either the Iowa county engineers association or the Iowa state association of county supervisors upon request to the committee.

## TRANSPORTATION DEPARTMENT[761](cont'd)

**102.11(2)** When a formula change has been initiated or requested, the committee shall meet, establish a work plan, and set up a work schedule.

**102.11(3)** The committee shall conduct such studies, research, development, and testing as are required to evaluate the proposal and shall, within 18 months after initiation or receipt of the proposal, publish an official report outlining the committee's findings and recommendations.

**102.11(4)** If the official report recommends adoption of a new or modified distribution formula, the chair shall communicate the details of the committee's recommendations to all county engineers, all county supervisors and the department of transportation in such a manner as the committee deems appropriate. This communication shall solicit comments on the committee's recommendations.

**102.11(5)** After receipt and consideration of comments from counties, the committee may adopt a resolution that formally proposes a distribution formula and places it into official consideration.

**102.11(6)** The chair shall forward the resolution to the executive boards of both the Iowa county engineers association and the Iowa state association of county supervisors, with a request for endorsement of the proposed distribution formula.

**102.11(7)** If both executive boards endorse the proposed distribution formula, the chair shall request each individual county to consider and adopt a resolution in favor of or in opposition to the proposed distribution formula.

**102.11(8)** If at least 66 counties adopt resolutions in favor of the proposed distribution formula, the distribution formula is adopted without further committee action.

**102.11(9)** The chair shall notify the following organizations and groups when the distribution formula has been adopted:

- a. The executive board of the Iowa county engineers association.
- b. The executive board of the Iowa state association of county supervisors.
- c. The office of systems planning of the department of transportation.
- d. The office of the treasurer of state.
- e. All county engineers and county supervisors.
- f. The Iowa county engineers association service bureau.

**761—102.12(312) Judicial review.** Any county that is aggrieved or adversely affected by a decision of the secondary road fund distribution committee may seek judicial review of such agency action under the provisions of Iowa Code section 17A.19.

**761—102.13(312) Severability clause.** If any section, provision, or part of these rules is adjudged invalid or unconstitutional, such adjudication shall not affect the validity of these rules as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

These rules are intended to implement Iowa Code Supplement section 312.3C.

## ARC 4903B

PUBLIC SAFETY  
DEPARTMENT[661]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 100.35, the Department of Public Safety hereby adopts amendments to Chapter 5, "Fire Marshal," Iowa Administrative Code.

Iowa Code chapter 100 assigns broad authority to the Fire Marshal to adopt rules establishing fire safety requirements which apply to a broad range of occupancies across the state. Numerous adoptions of individual rules over a 50-year period have resulted in a set of rules which is now quite complex. An effort is underway to evaluate all Fire Marshal rules with a view to enacting a new set of integrated standards; however, this effort will take some time to complete. Meanwhile, various inconsistencies and errors have been identified in the current rules and this rule making is intended to address those problems.

Following are the major items covered in these amendments:

- Several references remain in 661—Chapter 5 to the "effective date of these rules." These references have been corrected to dates certain.
- The rule making that resulted in the adoption of provisions of the Life Safety Code as the general exit requirements in the Fire Marshal rules involved rescinding and reserving several rules. An inadvertent result of rescinding these rules is that there are a number of cross references in remaining rules to the rules that have been rescinded. The rule making undertaken here corrects this problem by restoring the requirements embodied in the rescinded rules. This is accomplished by modifying the language in rules which contain cross references to rules previously rescinded, to reflect and clarify requirements.
- An error in a recent adoption of rules for assembly occupancies has been corrected.
- A reference to the address of the Fire Marshal Division has been updated.
- Rules regarding obtaining records from the Fire Marshal Division have been updated.
- Several definitions have been added or updated for clarification.
- Existing references to various editions of standards of the National Fire Protection Association have been corrected to remove inconsistencies.

Iowa Code section 100.35 requires that the Fire Marshal adopt rules only after a public hearing. A public hearing was held on January 6, 2006, at 10 a.m. in the Fire Marshal Division Conference Room, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309. It should be noted that this hearing was not the same as an "opportunity for oral presentation" described in Iowa Code chapter 17A, but was held pursuant to Iowa Code section 100.1, subsection 5.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the adoption of these amendments are impracticable. While a public hearing was held prior to adoption of these amendments, the procedures followed were not equivalent to those specified for public notice and participation by Iowa Code chapter 17A. The requirements adopted herein potentially affect the safety of the inhabitants and occupants of affected occupancies. Clarifying the continued applicability of long-standing fire safety requirements to affected occupancies

will reduce confusion and uncertainty on the part of regulated entities and enforcement personnel.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments made effective February 1, 2006, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by reducing potential confusion about the continued applicability of long-standing fire safety requirements to affected occupancies.

These amendments have also been proposed as part of the normal rule-making process. Notice of Intended Action proposing changes identical to those adopted here was submitted and is published herein as **ARC 4904B**. A public hearing will be held on the amendments as proposed in the Notice of Intended Action on March 24, 2006, at 9:30 a.m. in the Fire Marshal Division Conference Room, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309.

These amendments became effective February 1, 2006.

These amendments are intended to implement Iowa Code sections 100.1 and 100.35.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule **661—5.2(17A,80,100,101,101A)** by adopting the following **new** definitions:

"Basement" means a usable or unused floor space not meeting the definition of a "story."

"Corridor" means an enclosed exit access component that defines and provides a path of egress travel to an exit.

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused underfloor space is more than 6 feet above grade for more than 50 percent of the total perimeter or is more than 12 feet above grade at any point, such usable or unused underfloor space shall be considered as a story.

ITEM 2. Amend rule 661—5.10(17A,22,100,692) as follows:

**661—5.10(17A,22,100,692) Public inspection of fire marshal files and fire records.** The fire marshal's office keeps a record on file of every reported fire in Iowa. All other important written information gathered by the fire marshal also is filed. Most of the contents of these documents are available to the public. Some of the information contained in these files, such as *investigative data*, intelligence data or criminal history data, as defined in Iowa Code chapter 692, is not a public record. Requests for information should be addressed to the State Fire Marshal Division, Wallace State Office Building Iowa Department of Public Safety, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50319 50309.

**5.10(1)** A person may obtain a request to examine or copy of a public record by either visiting the fire marshal's office submitting a request in person or submitting a request in writing. Before visiting this office to examine these records, one A person who plans to make a request in person to examine public records should first contact the office first by telephone at (515)281-5821 to determine if personnel will be available to assist them the person. Such examination may

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

take place during reasonable business hours and public records may be copied.

**5.10(2)** A copy will be provided on request of any public record in the possession of the fire marshal division at the expense of the person requesting the copy of the record. The fee for a copy of a record shall reflect only the cost of copying the record and the time required of staff of the department of public safety to retrieve the record, copy the record, supervise the copying of the record, and mail the record.

**5.10(3)** If a person wishes a copy of the record of a particular fire, it may be copied in the fire marshal's office or that person may so request by writing to the fire marshal's office setting forth the date, time and address, including county, of the fire. The fire marshal will forward a copy of the public record and may request reimbursement for the actual cost of copying and mailing the information.

ITEM 3. Amend rule 661—5.11(17A,80,100) as follows:

Amend subrule **5.11(3)** by adding the following **new** note following the subrule:

NOTE: An owner who receives an order from the fire marshal may appeal the order using procedures established in 661—Chapter 10.

Amend subrule **5.11(8)** by adding the following **new** note following the subrule:

NOTE: An owner who receives a notice of noncompliance from the fire marshal may appeal the notice using procedures established in 661—Chapter 10.

ITEM 4. Amend rule **661—5.15(17A,100)** as follows:

Amend the definition of “rules of the state fire marshal” as follows:

“Rules of the state fire marshal” include means any rules contained in 661—Chapters 5, 51, 53, 54, 55, and 59 adopted pursuant to rule-making authority assigned to the fire marshal, including but not limited to rules adopted pursuant to Iowa Code section 100.1, 100.35, 100B.10, 100C.7, 101.1, 101.23, or 101A.5, or to implement any provision of Iowa Code chapter 100, 100A, 100B, 100C, 101, or 101A, or any other reference in an Iowa statute to rule making by the fire marshal or establishment of fire safety standards or requirements by the fire marshal.

NOTE: As of February 1, 2006, the following chapters are “rules of the state fire marshal”: 661—Chapters 5, 51, 53, 205, 231, 251, 259, and 291.

Amend subrule **5.15(3)**, paragraph “d,” as follows:

d. File petition. A petition is deemed filed when it is received in the office of the state fire marshal. A petition should be sent or delivered to the Iowa State Fire Marshal, 621 East 2nd Street 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309.

Amend subrule 5.15(16), introductory paragraph, as follows:

**5.15(16)** Sample petition for waiver. A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must either be submitted on a completed waiver request form provided by the fire marshal or substantially conform to the following form:

ITEM 5. Adopt **new** rule 661—5.50(100) to read as follows:

**661—5.50(100) General requirements.** The following requirements apply to all occupancies unless excluded in or in conflict with the rules for a specific occupancy.

**5.50(1)** An approved type of fire extinguisher shall be provided on each floor, so located as to be accessible to the

occupants and spaced so no person must travel more than 75 feet from any point to reach the nearest fire extinguisher.

**5.50(2)** All fire and life safety equipment or devices shall be regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards. Fire and life safety equipment includes fire extinguishing equipment; alarm systems; doors and their appurtenances; electric service, including appliances, cords and switches; heating and ventilation equipment; sprinkler systems; and exit facilities.

**5.50(3)** Excessive storage of combustible or flammable materials such as papers, cartons, magazines, paints, old clothing, furniture and similar materials shall not be permitted.

**5.50(4)** Food preparation facilities shall be protected and maintained in accordance with NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition.

**5.50(5)** Automatic sprinkler system. An approved automatic sprinkler system shall be installed in every story or basement of a building when the floor area exceeds 1,500 square feet and there is not provided at least 20 square feet of opening entirely above the adjoining ground level in each 50 lineal feet or fraction thereof of exterior wall in the story or basement on at least one side of the building. Openings shall have a minimum dimension of not less than 30 inches. Such openings shall be accessible to the fire department from the exterior.

When openings in a story are provided on only one side and the opposite wall of such story is more than 75 feet from such openings, the story shall be provided with an approved automatic sprinkler system, or openings as specified above shall be provided on at least two sides of an exterior wall of the story.

If any portion of a basement is located more than 75 feet from openings required in this subrule, the basement shall be provided with an approved automatic sprinkler system.

EXCEPTION: Dwellings, lodging houses, private garages, sheds and agricultural buildings are not subject to subrule 5.50(5).

**5.50(6)** Underground structures. Underground structures which exceed 1,500 square feet per floor shall be protected throughout by an approved automatic sprinkler system.

Exits from underground structures involving upward travel, such as ascending stairs or ramps, shall be separated from main floor areas. Stair towers of two-hour construction shall be provided from underground structures when serving up to two floors. Stair towers of four-hour construction shall be provided from underground structures serving more than two floors.

Outside smoke venting shall be provided to prevent the exits from becoming charged with smoke from any fire in the area served by the exits.

Emergency lighting shall be provided for all underground structures.

ITEM 6. Amend rule 661—5.51(100) as follows:

**661—5.51(100) Exits.** NFPA 101, 2000 edition, Chapter 7, is adopted as the general rules establishing exit requirements with the following amendment:

Amend Section 7.2.1.7 as follows:

7.2.1.7 **Panic Hardware and Fire Exit Hardware.** Panic hardware shall be provided on each required exit door in any assembly occupancy, educational occupancy, or day care occupancy with an occupant load of 50 or more.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

NOTE: When exit requirements for a specific form of occupancy are in conflict with this rule, the requirements for the specific occupancy apply.

This rule is intended to implement Iowa Code section 100.35.

ITEM 7. Amend rule 661—5.100(100) as follows:

Amend subrule 5.100(2) as follows:

**5.100(2)** Effective date. Existing buildings will be classified as those constructed prior to the effective date of these rules *June 2, 1983*.

Rescind subrule **5.100(6)**.

ITEM 8. Amend rule 661—5.230(100) as follows:

Amend subrule 5.230(4) as follows:

**5.230(4)** Existing buildings. *“Existing building” means a building or structure which has been in use, consistent with its current occupancy classification, continually since January 15, 1991, and to which no major additions, alterations, renovations, or remodeling has been made on or after January 16, 1991. Buildings or structures to which additions, alterations, or repairs are made shall comply with all of the requirements for new buildings or structures. Buildings in existence at the time of adoption of this code Existing buildings may have their existing use or continue to be used under the same occupancy classification continued, if this occupancy was legal at the time of the adoption of this code, approval of the occupancy use and provided such continued use is not dangerous to life.*

Amend subrule 5.230(5) as follows:

**5.230(5)** Parking garages. Open parking garages over four stories in height are exempt from automatic fire extinguishing requirements, provided they are of noncombustible construction and house no occupancy above the open parking garage.

NOTE: ~~An open~~ *“Open parking garage” shall meet the definition and requirements as spelled out mean an open parking garage as defined in the Uniform Building Code (1988 Edition), Section 709(b). Any level which does not qualify as an open parking garage and all levels below shall have an approved automatic fire extinguishing system. All other parking structures shall comply with the standards for “Parking Structures” No. 88A, 1985 Edition of the National Fire Protection Association.*

ITEM 9. Amend rule 661—5.301(100) as follows:

Amend the exception to subrule **5.301(3)** as follows:

EXCEPTION: If a new assembly occupancy is in a local jurisdiction which has adopted a local fire ordinance which requires compliance with the provisions of the International Fire Code, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, 2000 edition or 2003 edition, and if the local jurisdiction enforces the local ordinance through reviews of construction plans and regular fire inspections, the ~~existing~~ *new* assembly occupancy shall be deemed to be in compliance with the requirements of this rule if the local jurisdiction verifies that the occupancy is in compliance with the provisions of the local fire ordinance.

Add the following **new** subrule:

**5.301(4)** Assembly occupancies in educational occupancies. An assembly occupancy within an educational occupancy is not subject to the provisions of this rule and shall be subject to the applicable requirements within rules 661—5.650(100) through 661—5.775(100).

“Assembly occupancy in an educational occupancy” means a portion of an educational occupancy which meets the definition of assembly occupancy in NFPA 101, Life

Safety Code, 1994 edition. An assembly occupancy adjacent to or on the grounds of a school or college shall be considered an “assembly occupancy in an educational occupancy” if 50 percent or more of its use is for events involving students or sponsored by the school, the school district with which the school is affiliated, or the college. An assembly occupancy adjacent to or on the grounds of a school or college shall not be considered an “assembly occupancy within an educational occupancy” if less than 50 percent of its use is for events which do not involve students or are sponsored by the school or school district with which the school is affiliated, or the college. Any assembly occupancy inside a school or college building shall be considered an “assembly occupancy within an educational occupancy.”

Any assembly occupancy within an educational occupancy where the assembly occupancy was constructed prior to November 1, 2005, and the educational occupancy was constructed prior to February 1, 2000, shall comply with rules 661—5.650(100) through 661—5.667(100) if connected with a school, and with rules 661—5.749(100) through 661—5.765(100) if connected with a college.

Any assembly occupancy within an educational occupancy where the assembly occupancy was constructed on or after July 1, 2006, or for which plans have been submitted for review on or after February 1, 2006, shall comply with NFPA 101, Life Safety Code, 1994 edition, Chapter 8.

ITEM 10. Amend rule 661—5.502(100) as follows:

Amend subrule **5.502(1)**, paragraph “b,” as follows:

b. *“Regulations shall apply to all centers.” These subrules of the regulations Rules 661—5.500(100) through 661—5.502(100) shall apply to all child day care centers. These regulations Rules 661—5.500(100) through 661—5.502(100) shall constitute the minimum requirements for day care centers for approval by the state fire marshal’s office. Further, and more stringent, Additional requirements may be required established by other governmental divisions, agencies or governmental subdivisions, as a requirement for participation in various programs, or to comply with local codes and regulations.*

Rescind and reserve subrule **5.502(2)**, paragraph “c,” sub-paragraph (5).

ITEM 11. Amend rule 661—5.607(100) as follows:

Amend the introductory paragraph as follows:

**661—5.607(100) Scope.** Group home facilities include ~~those residential~~ *facilities for persons with in drug and alcohol rehabilitation, halfway houses, juvenile detention, birthing centers or any residential-type facility requiring fire marshal approval or inspection for licensing or occupancy but not licensed under Iowa Code chapter 135C, and not covered by rules of the fire marshal which apply to a specific type of occupancy.*

Amend subrule 5.607(1) as follows:

**5.607(1)** Application. ~~These rules shall Rules 661—5.607(100) through 661—5.613(100) apply to those facilities, classified as group homes in rule 5.607(100), which provide sleeping accommodations for six or more persons, including buildings in which separate sleeping rooms are provided on either a transient or permanent basis, with or without meals but without separate cooking facilities for individual occupants.~~

ITEM 12. Amend Exception 2 to subrule **5.608(2)** as follows:

EXCEPTION 2: If the dwelling unit is protected throughout by an approved automatic sprinkler system in accordance with NFPA 13, Standard for the Installation of Sprinkler Sys-

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

tems, *1999 edition*, or NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Mobile Homes, *1999 edition*, as applicable.

ITEM 13. Amend subrule **5.620(7)**, paragraph “a,” as follows:

a. The home shall have smoke detection installed on each occupied floor, including basements, in accordance with ~~National Fire Protection Association Standard No. 74 NFPA 72, 1999 edition, Chapter 11.~~ Smoke detectors shall be interconnected so that activation of any detector will sound an audible alarm throughout. The system shall be tested by a competent person at least semiannually with date of test and name noted.

ITEM 14. Amend subrule 5.653(1) as follows:

**5.653(1)** Corridors used as means of access to exits, and corridors used for discharge from exits, shall provide a clearance of at least 6 feet in width, except in the case of buildings constructed prior to the effective date of this rule *February 1, 2000*. Room doors or locker doors swinging into corridors shall not, at any point in the swing, reduce the clear effective width of the corridor to less than 6 feet, nor shall drinking fountains or other equipment, fixed or movable, be so placed as to obstruct the required minimum 6-foot width.

ITEM 15. Amend rule 661—5.661(100) as follows:

Amend the catchwords as follows:

**661—5.661(100) Heating equipment and flammable and combustible liquids.**

Amend subrule 5.661(2) as follows:

**5.661(2)** Installation for any heating equipment shall be in accordance with the manufacturer’s instruction and conditions of safe operation. *Heating equipment shall be listed by a nationally recognized testing laboratory.*

Rescind and reserve subrules **5.661(3)**, **5.661(4)**, and **5.661(5)**.

Adopt the following **new** subrule 5.661(7):

**5.661(7)** Any transportation, storage, handling, or use of flammable or combustible liquids, including but not limited to liquefied petroleum gases and liquefied natural gases, shall comply with all applicable provisions of 661—Chapter 51.

ITEM 16. Amend subrule 5.666(1) as follows:

**5.666(1)** Where automatic sprinkler protection is provided, other requirements of these regulations ~~rules 661—5.650(100) through 661—5.667(100)~~ may be modified to such extent as permitted by other provisions in ~~this section rule 661—5.666(100)~~.

ITEM 17. Amend subrule 5.667(2) as follows:

**5.667(2)** Open plan buildings shall have *automatic sprinklers* in enclosed stairways and any other vertical openings between floors ~~protected in accordance with 5.666(1)~~.

ITEM 18. Amend subrule 5.675(1), introductory paragraph, as follows:

**5.675(1)** ~~Chapters Sections 10-1 through 40-5 10-5.4~~ of the NFPA Life Safety Code 101, 1994 edition, along with referenced appendices and chapters are hereby adopted by reference as the rules governing school buildings, additions, alterations and renovations for which plans are approved by the fire marshal division on or after February 1, 2000, with the following amendments:

ITEM 19. Amend rule 661—5.759(100) as follows:

Amend the catchwords as follows:

**661—5.759(100) Heating equipment and flammable and combustible liquids.**

Amend subrule 5.759(2) as follows:

**5.759(2)** Installation for any heating equipment shall be in accordance with the manufacturer’s instruction and conditions of safe operation. *Heating equipment shall be listed by a nationally recognized testing laboratory.*

Rescind and reserve subrules **5.759(3)**, **5.759(4)**, and **5.759(5)**.

Adopt the following **new** subrule 5.759(7):

**5.759(7)** Any transportation, storage, handling, or use of flammable or combustible liquids, including but not limited to liquefied petroleum gases and liquefied natural gases, shall comply with all applicable provisions of 661—Chapter 51.

ITEM 20. Rescind and reserve rule **661—5.760(100)**.

ITEM 21. Amend subrule 5.764(8) as follows:

**5.764(8)** All automatic sprinkler systems required by ~~these regulations~~ *this rule* shall be maintained in a reliable operating condition at all times and such periodic inspections and tests as are necessary shall be made to ensure proper maintenance.

ITEM 22. Amend rule 661—5.801(100) as follows:

Amend subrule **5.801(1)**, paragraph “a,” as follows:

a. General. Buildings or parts of buildings classed as residential occupancies shall be limited to the types of construction set forth in Table 5-B ~~in rule 5.50(100) “Exits”~~ and shall not exceed, in area or height, the limits specified in Table 8-B.

Amend subrule 5.801(4) as follows:

**5.801(4)** Occupant load. For the purpose of establishing exit requirements, the occupant load of any building or portion thereof used for the purpose of rules 5.801(100) to 5.803(100) shall be determined by dividing the net floor area assigned to that use by the square feet per occupant as indicated in Table 5-A ~~and rule 661—5.51(100)~~.

ITEM 23. Amend rule 661—5.802(100) as follows:

Amend subrule 5.802(1) as follows:

**5.802(1)** Types of exits. Exits of the specified number and width shall be one or more of the following types as listed in the state fire marshal’s fire safety rules and regulations for new and existing buildings. *See rule 5.51(100)*.

1. Doors of the swinging type leading directly to the outside or to a lobby or passageway leading to the outside of the building. *(See rule 5.53(100))*

2. Horizontal exits. *(See rule 5.57(100))*

3. Smokeproof towers. *(See rule 5.59(100))*

4. Interior stairs. *(See rule 5.55(100) and 5.58(100))*

5. Outside stairs. *(See rule 5.55(100))*

6. Ramps. *(See rule 5.56(100))*

7. Escalators. *(See rule 5.58(100))*

8 7. Exit passageways. *(See rule 5.61(100))*

9 8. Corridors and exterior balconies. *(See rule 5.54(100))*

10 9. Exit courts. *(See rule 5.60(100))*

Amend subrule 5.802(2) as follows:

**5.802(2)** Number of exits. ~~The minimum number of exits shall be as prescribed in rule 5.52(100).~~ *Every building or usable portion thereof shall have at least one exit, not less than two exits where required by Table 5-A, and additional exits as required by rules 661—5.51(100) and 661—5.101(100).*

*For the purposes of these rules, basements and occupied roofs shall be provided with exits as required for stories.*

*Every floor above or below the first story in every building shall have at least two exits that shall be remote from each*

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*other and so arranged and constructed as to minimize any possibility that both may be blocked by any one fire or other emergency.*

EXCEPTION 1: Except as provided in Table 5-A, only one exit need be provided from the second story within an individual dwelling unit. *Each sleeping room shall have an escape or rescue window having a minimum net clear opening of 5.7 square feet. The minimum net clear height opening dimension shall be 24 inches. The minimum net clear opening width dimension shall be 20 inches. Where windows are provided as a means of escape or rescue, they shall have a finished sill height not more than 44 inches above the floor.*

EXCEPTION 2: Two or more dwelling units on the second story may have access to only one common exit when the total occupant load using that exit does not exceed 10 ~~or~~ and the total floor area of the dwelling units served does not exceed 2,000 square feet of floor area. See Table 5-A.

*Every story or portion thereof having an occupant load of 501 to 1,000 shall have not fewer than three exits.*

*Every story or portion thereof having an occupant load of 1,001 or more shall have not fewer than four exits.*

Amend subrule 5.802(3) as follows:

**5.802(3)** Required exit width. Exit width shall be determined as ~~outlined in subrule 5.52(2), specified in NFPA 101, Life Safety Code, 2000 edition, Section 7.3. See rule 5.51(100).~~

Amend subrule 5.802(4) as follows:

**5.802(4)** Arrangement of exits. The arrangement of required exits shall be as ~~prescribed in subrule 5.52(3), specified in NFPA 101, Life Safety Code, 2000 edition, Section 7.5. See rule 5.51(100).~~

Amend subrule 5.802(5) as follows:

**5.802(5)** Travel distance. The maximum travel distance from any point to an exterior exit door, horizontal exit, exit passageway, or an enclosed stairway shall ~~not exceed 150 feet, or 200 feet in a building equipped with an automatic sprinkler system complying with subrule 5.52(6). These distances may be increased 100 feet when the last 150 feet is within a corridor complying with rule 5.54(100), be in accordance with NFPA 101, Life Safety Code, 2000 edition, Section 7.6.~~

Amend subrule 5.802(6) as follows:

**5.802(6)** Exit illumination and emergency power. At any time the a building is occupied, exits shall be illuminated with light having an intensity of not less than one foot-candle at floor level and in accordance with the requirements of rule 5.62(100). ~~The power supply for exit illumination shall normally be provided by the premises' wiring system. In the event of its failure, illumination shall be automatically provided from an emergency system. Emergency systems shall be supplied from an approved rechargeable system or an on-site generator, and the system shall be installed in accordance with the requirements of NFPA 70, National Electrical Code, 1999 edition.~~

Amend subrule 5.802(7) as follows:

**5.802(7)** Exit signs. ~~Exit signs shall be installed at required exit doorways and where otherwise necessary to clearly indicate the direction of egress in accordance with the requirements of rule 5.63(100). Means of egress shall have signs in accordance with NFPA 101, Life Safety Code, 2000 edition, Section 7.10, in all buildings requiring more than one exit.~~

Amend subrule 5.802(8) as follows:

**5.802(8)** Shaft enclosures.

a. General. Openings extending vertically through floors shall be enclosed in a shaft of fire-resistive construction having the time period set forth in Table 5-B for shaft en-

closures. Protection for stairways shall be as specified in ~~rules 5.58(100) and 5.59(100). NFPA 101, Life Safety Code, 2000 edition, Chapter 7.~~

EXCEPTION 1: An enclosure will not be required for ~~openings an opening~~ which ~~serve serves~~ only one adjacent floor and ~~are is~~ not connected with openings serving other floors and which ~~are is~~ not concealed within the building construction.

EXCEPTION 2: Stairs within individual apartments need not be enclosed.

b. Rubbish and linen chutes. In new residential occupancies, rubbish and linen chutes shall terminate in rooms separated from the remainder of the building by a one-hour fire-resistive occupancy separation. Openings into the chutes and termination rooms shall not be located in exit corridors or stairways.

ITEM 24. Amend subrule **5.803(4)**, paragraph "c," as follows:

c. Automatic sprinkler system. Automatic sprinkler systems shall be provided in all residential occupancies more than four stories in height or more than 65 feet above grade level. (Also see subrule ~~5.52(6)~~ 5.50(5) and Iowa Code section 100.39.)

ITEM 25. Amend subrule 5.804(4) as follows:

**5.804(4)** Occupant load. For the purpose of establishing exit requirements, the occupant load of any building or portion thereof used for the purposes of rules 5.804(100) to 5.806(100) shall be determined by dividing the net floor area assigned to that use by the square feet per occupant as indicated in Table 5-A and ~~rule 661—5.51(100) of the state fire marshal's fire safety rules regarding exits.~~

ITEM 26. Amend rule 661—5.805(100) as follows:

#### **661—5.805(100) Exit facilities.**

**5.805(1)** Types of exits. Exits of the specified number and width shall be one or more of the following types as listed in the state fire marshal's fire safety rules and regulations for new and existing buildings. *See rule 5.51(100).*

1. Doors of the swinging types leading directly to the outside or to a lobby or passageway leading to the outside of the building. (~~See rule 5.53(100))~~

2. Horizontal exits. (~~See rule 5.57(100))~~

3. Smokeproof towers. (~~See rule 5.59(100))~~

4. Interior stairs. (~~See rules 5.55(100) and 5.58(100))~~

5. Outside stairs. (~~See rule 5.55(100))~~

6. Ramps. (~~See rule 5.56(100))~~

7. Escalators. (~~See rule 5.58(100))~~

~~8 7. Exit passageways. (See rules 5.61(100) and 5.101(100))~~

~~9 8. Corridors and exterior balconies. (See rule 5.54(100))~~

~~10 9. Exit courts. (See rule 5.60(100))~~

An existing stairway, fire escape or other exit component which meets the requirements of rules 5.100(100) to 5.105(100) may be continued in use provided it is in good repair and acceptable to the authority having jurisdiction.

Any exit modification required by this chapter shall meet the requirements for new construction.

**5.805(2)** Number of exits. The minimum number of exits shall be as prescribed in subrule ~~5.52(1) or~~ 5.101(1).

*Every building or usable portion thereof shall have at least one exit, not less than two exits where required by Table 5-A following rule 5.105(100), and additional exits as required by these rules.*

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*For the purposes of these rules, basements and occupied roofs shall be provided with exits as required for stories.*

*Every floor above or below the first story in every building shall have at least two exits that shall be remote from each other and so arranged and constructed as to minimize any possibility that both may be blocked by any one fire or other emergency.*

*EXCEPTION 1: Except as provided in Table 5-A, only one exit need be provided from the second story within an individual dwelling unit.*

*EXCEPTION 2: Any living dwelling unit which has an exit directly to the street or yard at ground level or by way of an outside stairway, or an enclosed stairway with fire-resistance rating of one hour or more serving that apartment only and not communicating with any floor below the level of exit discharge or other area not a part of the apartment served, may have a single exit serving that unit only.*

*EXCEPTION 3: Any building less than three stories in height with no floor below the floor of exit discharge or, in case there is such a floor, with the street floor construction of at least one-hour fire resistance, may have a single exit, under the following conditions:*

*a 1. The stairway is completely enclosed with a partition having a fire-resistance rating of at least one hour with self-closing fire doors protecting all openings between the stairway enclosure and the building.*

*b 2. The stairway does not serve any floor below the floor of exit discharge.*

*c 3. All corridors serving as access to exits have at least a one-hour fire-resistance rating.*

*d 4. There is not more than 35 feet of travel distance to reach an exit from the entrance door of any living dwelling unit.*

**5.805(3)** Required exit width. Exit width shall be determined as ~~outlined in subrule 5.52(2).~~ *specified in NFPA 101, Life Safety Code, 2000 edition, Section 7.3.*

**5.805(4)** Arrangement of exits. The arrangement of required exits shall be as ~~prescribed in subrule 5.52(3).~~ *specified in NFPA 101, Life Safety Code, 2000 edition, Section 7.5. See rule 661—5.51(100).*

**5.805(5)** Travel distance. The maximum travel distance from any point to an exterior exit door, horizontal exit, exit passageway, or an enclosed stairway shall not exceed 150 feet.

*EXCEPTION: The travel distance may be increased to 200 feet if protected throughout by an automatic sprinkler system.*

**5.805(6)** Dead-end corridors. Dead-end corridors shall not exceed 20 feet in length.

*EXCEPTION: ~~When corridors meet~~ A dead-end corridor may exceed 20 feet in length if it meets the requirements of rule 5.105(100).*

**5.805(7)** Exit illumination and emergency power. Exits shall be illuminated at any time the building is occupied with light having an intensity of not less than 1 foot-candle at floor level ~~and in accordance with the requirements of rule 5.62(100).~~ *The power supply for exit illumination shall normally be provided by the premises' wiring system. In the event of its failure, illumination shall be automatically provided from an emergency system. Emergency systems shall be supplied from an approved rechargeable system or an on-site generator, and the system shall be installed in accordance with the requirements of NFPA 70, National Electrical Code, 1999 edition.*

**5.805(8)** Exit signs. Exit signs shall be installed at required exit doorways and where otherwise necessary to clearly indicate the direction of egress in accordance with the requirements of subrule 5.101(5).

**5.805(9)** Protection of vertical openings. All interior stairways, elevator shafts, light and ventilation shafts and other vertical openings shall be enclosed or protected as provided in rule 5.102(100).

*EXCEPTION 1: Unprotected openings connecting not more than three floors may be permitted provided the building is completely sprinklered.*

*EXCEPTION 2: Stairs within individual apartments need not be enclosed.*

ITEM 27. Amend subrule **5.806(4)**, paragraph "c," as follows:

c. Automatic sprinkler protection. When automatic sprinkler protection is provided, it shall ~~be as required by comply with~~ subrule 5.52(6) 5.51(1).

ITEM 28. Amend subrule 5.820(6) as follows:

**5.820(6)** Exit door markings. Exit doors must be marked in accordance with ~~661—5.63(100), except internally illuminated exit signs are not required if the door is clearly illuminated by emergency lighting~~ *NFPA 101, Life Safety Code, 2000 edition, Section 7.10.*

[Filed Emergency 1/27/06, effective 2/1/06]

[Published 2/15/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/15/06.

**ARC 4870B****COLLEGE STUDENT AID  
COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission amends Chapter 14, "Osteopathic Physician Recruitment Program," Iowa Administrative Code.

These amendments increase the maximum state-funded loan repayment award from up to \$40,000 to up to \$50,000 and are intended to help communities with limited resources recruit and retain qualified physicians in medical areas that meet the needs of the community. These amendments increase maximum awards to maintain a balance in the annual after-tax benefits that have developed as tuition scholarships have increased with tuition charges and increases in student loan borrowing. In addition, these amendments remove the primary care practice requirement allowing community officials to determine the medical specialties most needed in the communities and an opportunity to recruit qualified medical professionals to these communities.

Notice of Intended Action was published in the December 7, 2005, Iowa Administrative Bulletin as **ARC 4722B**. At the request of the Commission and with the approval of Des Moines University, the definition of "eligible rural community" in rule 283—14.1(261) was modified following publication of the Notice to include language indicating that the community must agree to match state funds on at least a dollar-for-dollar basis.

These amendments were adopted on January 17, 2006.

These amendments will become effective March 22, 2006.

These amendments are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

The following amendments are adopted.

ITEM 1. Amend the following definitions in rule **283—14.1(261)**:

"Eligible rural community" means a medically underserved rural Iowa community with a population of 10,000 or less which agrees to match state funds on at least a dollar-for-dollar basis under this program.

"Primary care" means family medicine, general internal medicine, pediatrics, and emergency room medicine.

ITEM 2. Amend subparagraphs **14.3(7)"a"(1)** to **(3)** as follows:

(1) Complete a residency in ~~primary care program~~ within four years after graduation from the university.

(2) Practice in an Iowa *eligible rural* community, identified by the university as a participating physician shortage community.

(3) Annually certify employment in a ~~designated Iowa physician shortage community~~, an *eligible rural* community.

ITEM 3. Amend rule 283—14.4(261) as follows:

**283—14.4(261) Physician loan repayment program.**

**14.4(1) Recruitment.** The university shall recruit and place physicians in *eligible* rural communities that agree to provide additional funds for the physician loan repayment program.

**14.4(2) Physician service requirement.** The physician service requirement for the physician loan repayment program is four years.

**14.4(3) Award.** The physician may receive up to \$40,000 \$50,000 in state-funded repayment benefits when a community agrees to fund matching benefits of at least \$40,000 \$50,000.

**14.4(4) Disbursement.**

a. The commission shall disburse state funds to the university upon receipt of the physician's contract to practice in an eligible rural community.

b. The university shall arrange for the repayment of the physician's loan(s).

**14.4(5) Repayment.**

a. If a physician fails to *meet the* practice ~~primary care requirements~~ in the agreed-upon location ~~for four years~~, the physician shall repay the commission on a prorated basis. The prorated balance will be calculated as a daily amount by dividing the amount advanced by the number of days in the service period less the number of days served by the physician multiplied by the daily amount.

b. A physician shall repay the prorated balance of the physician loan repayment benefits and accrued interest at 12 percent per annum.

c. The prorated balance of the physician loan repayment benefits must be paid in full within three years from the date the ~~primary care~~ service ends.

**14.4(6) and 14.4(7) No change.**

[Filed 1/20/06, effective 3/22/06]

[Published 2/15/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/15/06.

**ARC 4869B****COLLEGE STUDENT AID  
COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 261.3 and 261.37(5), the College Student Aid Commission rescinds Chapter 18, "Iowa Work-Study Program," Iowa Administrative Code, and adopts a new Chapter 18 with the same title.

The adopted new Chapter 18 restructures the information into a more logical format and provides student eligibility information.

Notice of Intended Action was published in the October 26, 2005, Iowa Administrative Bulletin as **ARC 4597B**. The Commission received comments from its community college task force asking that the Commission consider removing the institutional matching funds requirement under this program. The Commission has revised rule 283—18.6(261) in order that colleges and universities exempt from the federal work-study institutional match requirement also be exempt from the state work-study institutional match requirement. Rule 283—18.6(261) now reads as follows:

**"283—18.6(261) Matching funds.** A college or university is required to provide at least 20 percent in institutional matching funds unless the college or university has received a waiver of the federal work-study match requirement from the federal government."

These rules were adopted on January 17, 2006.

These rules will become effective March 22, 2006.

These rules are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 18] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 4597B**, IAB 10/26/05.

[Filed 1/20/06, effective 3/22/06]  
[Published 2/15/06]

[For replacement pages for IAC, see IAC Supplement 2/15/06.]

**ARC 4868B****COLLEGE STUDENT AID  
COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 261.3 and 261.23, the College Student Aid Commission adopts new Chapter 34, "Registered Nurse Recruitment Program," Iowa Administrative Code.

The adopted new Chapter 34 provides rules for the administration of a program which was funded by the General Assembly during the 2005 session.

Notice of Intended Action was published in the October 26, 2005, Iowa Administrative Bulletin as **ARC 4596B**. Following publication of the Notice, several nurses and the Iowa Nurses Association requested a review of the meaning of full-time enrollment status. In response to these comments, rule 283—34.3(261) has been revised to clarify the meaning of full-time enrollment status. Rule 283—34.3(261) now reads as follows:

**"283—34.3(261) Student eligibility.** An applicant must be an Iowa resident who is a registered nurse with a bachelor's degree in nursing and who is enrolled full-time as a graduate student at an eligible college or university located in Iowa. Full-time enrollment shall be defined by the college or university."

These rules were adopted on January 17, 2006.

These rules will become effective March 22, 2006.

These rules are intended to implement Iowa Code section 17A.3(1)"a" and "b" and chapter 261.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 34] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 4596B**, IAB 10/26/05.

[Filed 1/20/06, effective 3/22/06]  
[Published 2/15/06]

[For replacement pages for IAC, see IAC Supplement 2/15/06.]

**ARC 4905B****DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 10, "General Requirements," Iowa Administrative Code.

This amendment clarifies the sequence of services provided to new patients by a dental hygienist. This amendment allows the dental hygienist to provide services prior to the dentist's examining the patient as long as the services provided are rendered under direct or public health supervision. The amendment also requires that the dentist conduct an examination of the new patient during the initial visit.

This amendment is subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 28, 2005, as **ARC 4535B**. A public hearing on the amendment was held on October 18, 2005. One comment on the amendment was received from the Iowa Dental Association (IDA). The IDA expressed general support for the amendment and suggested some minor wording changes. In response to the comments, one change has been made to the Noticed amendment. Subrule 10.3(5) has been retained and renumbered as subrule 10.3(7).

This amendment was approved at the January 18, 2006, regular meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapters 17A, 147, 153, and 272C.

This amendment will become effective on March 22, 2006.

The following amendment is adopted.

Amend subrules 10.3(2) to 10.3(6) as follows:

**10.3(2)** ~~The administration of local anesthesia or nitrous oxide inhalation analgesia shall only be provided under the direct supervision of a dentist. Direct supervision of the dental hygienist requires that the supervising dentist be present in the treatment facility, but it is not required that the dentist be physically present in the treatment room.~~

**10.3(3 2)** All other authorized services provided by a dental hygienist shall be performed under the general, *direct*, or *public health* supervision of a dentist currently licensed in the state of Iowa in accordance with 650—1.1(153) and 650—10.5(153).

**10.3(3)** *Under the general or public health supervision of a dentist, a dental hygienist may provide educational services, assessment, screening, or data collection for the preparation of preliminary written records for evaluation by a licensed dentist. A dentist is not required to examine a patient prior to the provision of these dental hygiene services.*

**10.3(4)** *The administration of local anesthesia or nitrous oxide inhalation analgesia shall only be provided under the direct supervision of a dentist.*

**10.3(5)** *All other authorized services provided by a dental hygienist to a new patient shall be provided under the direct or public health supervision of a dentist. An examination by the dentist must take place during an initial visit by a new patient, except when hygiene services are provided under public health supervision.*

**10.3(4 6)** Subsequent examination and monitoring of the patient, including definitive diagnosis and treatment planning, is the responsibility of the dentist and shall be carried out in a reasonable period of time in accordance with the pro-

## DENTAL EXAMINERS BOARD[650](cont'd)

fessional judgment of the dentist based upon the individual needs of the patient.

**10.3(57)** General supervision shall not preclude the use of direct supervision when in the professional judgment of the dentist such supervision is necessary to meet the individual needs of the patient.

**10.3(6)** Nothing in these rules shall be interpreted so as to prevent a licensed dental hygienist from providing educational services, assessment, screening, or data collection for the preparation of preliminary written records for evaluation by a licensed dentist.

[Filed 1/27/06, effective 3/22/06]

[Published 2/15/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/15/06.

## ARC 4906B

## DENTAL EXAMINERS BOARD[650]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby amends Chapter 29, "Deep Sedation/General Anesthesia, Conscious Sedation and Nitrous Oxide Inhalation Analgesia," Iowa Administrative Code.

This amendment clarifies procedures for the renewal and reinstatement of permits to administer deep sedation/general anesthesia and conscious sedation.

This amendment is subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7. However, application and renewal fees are not subject to waiver, pursuant to 650—15.9(17A,147,153,272C).

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 28, 2005, as **ARC 4536B**. A public hearing on the amendment was held on October 18, 2005. One written comment in support of the amendment was received. One change to the Noticed amendment has been made. In subrule 29.11(3), the phrase "for more than 60 days" has been eliminated because subrule 29.11(2) already provides a grace period for late renewal of the permit.

This amendment was approved at the January 18, 2006, regular meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapters 147, 153, and 272C.

This amendment will become effective on March 22, 2006.

The following amendment is adopted.

Amend rule 650—29.11(153) as follows:

**650—29.11(153) Renewal.** *A permit to administer deep sedation/general anesthesia or conscious sedation shall be renewed biennially at the time of license renewal. Permits expire on June 30 of every even-numbered year.*

**29.11(1)** *To renew a permit, a licensee must submit the following:*

*Beginning 12 months from December 10, 1997, and for each renewal thereafter, permit holders are required to maintain evidence a. Evidence of renewal of ACLS certification.*

*Beginning 12 months from December 10, 1997, and for each renewal thereafter, permit holders are required to submit a b. A minimum of six hours of continuing education in*

the area of sedation. These hours may also be submitted as part of license renewal requirements.

*c. The appropriate fee for renewal as specified in 650—Chapter 15.*

**29.11(2)** *Failure to renew the permit prior to September 1 following its expiration shall cause the permit to lapse and become invalid for practice.*

**29.11(3)** *A permit that has lapsed may be reinstated upon submission of a new application for a permit in compliance with rule 29.5(153) and payment of the application fee as specified in 650—Chapter 15.*

[Filed 1/27/06, effective 3/22/06]

[Published 2/15/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/15/06.

## ARC 4897B

ENVIRONMENTAL PROTECTION  
COMMISSION[567]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4504B**. Seven public hearings were held with notice of the hearings sent to various individuals, organizations, associations and interest groups, and to statewide news network organizations. Comments were received from 381 persons and organizations. A responsiveness summary addressing the comments can be obtained from the Department of Natural Resources. After all comments from the public hearings were considered, no modifications were made to the final amendments from those published in the Notice.

The final rules adopt changes to the Commission's Water Quality Standards (WQS) as summarized below:

- Eliminate the exceptions of the design low flow requirement.
- Revise the general use classification.
- Designate as Class B(WW-1) Warm Water – Type 1 all of Iowa's perennial rivers and streams and intermittent streams with perennial pools that are not currently designated. (For more information about the Class B(WW-1) use designation, see **ARC 4895B** published herein.)
- Designate as Class A1 – Primary Contact Recreational Use all of Iowa's perennial rivers and streams and intermittent streams with perennial pools.

Additional information on Iowa's Water Quality Standards and the Department's rules can be found on the Department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

These amendments will become effective March 22, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

these amendments [61.2(5), 61.3(1), 61.3(2), 61.3(5)] is being omitted. These amendments are identical to those published under Notice as **ARC 4504B**, IAB 9/14/05.

[Filed 1/27/06, effective 3/22/06]  
[Published 2/15/06]

[For replacement pages for IAC, see IAC Supplement 2/15/06.]

**ARC 4895B****ENVIRONMENTAL PROTECTION  
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4505B**. Seven public hearings were held with notice of the hearings sent to various individuals, organizations, associations and interest groups, and to statewide news network organizations. Comments were received from 381 persons and organizations. A responsiveness summary addressing the comments can be obtained from the Department of Natural Resources.

The adopted amendments include changes to the rule-referenced document "Warm Water Stream Use Assessment and Attainability Analysis Protocol" (hereafter, "the protocol"). The modifications were made after all comments from the public hearings were considered.

The changes to the protocol are as follows:

1. Language under Section II. Surface Water Classification was modified. The original protocol cited rule language in 61.3(1)"b" that did not reflect the changes proposed in **ARC 4504B** and adopted in **ARC 4897B** herein. Specifically, the words "of significance" have been deleted to be consistent with the changes in 61.3(1)"b."

2. Language was added to the guidelines for Class HH Human Health streams in Subsection V. E. A guideline for Class HH waters has been added to include "game fish of harvestable size." This provides additional clarification to what might be considered when determining the applicability of a Class HH use for specific water bodies.

With the inclusion of the modifications described above, the final rules adopt changes to the Commission's Water Quality Standards (WQS) as summarized below:

- Change the current Class B(LR) use designation from Limited Resource Warm Water to Warm Water – Type 2 (Class B(WW-2)).
- Change the current Class B(WW) use designation from Significant Resource Warm Water to Warm Water – Type 1 (Class B(WW-1)).
- Add a new use designation titled Warm Water – Type 3 (Class B(WW-3)).
- Add a new use designation titled Human Health (Class HH).
- Incorporate by reference the document entitled "Warm Water Stream Use Assessment and Attainability Analysis Protocol," which proposes an approach to be followed in assessing the warm water uses of streams.

- Establish dissolved oxygen, chemical, and ammonia-nitrogen criteria for the new proposed use designation of Class B(WW-3) at the same level that is associated with the existing Class B(LR) use designation.

- Transfer all existing Class B(WW) designated waters to the new Class B(WW-1) use designation.

- Transfer all existing Class B(LR) designated waters to the new Class B(WW-2) use designation.

- Incorporate the proposed use designation nomenclature into the text of the Water Quality Standards at numerous locations and into the applicable rule-referenced documents.

- Add Class HH to Table 1, Criteria for Chemical Constituents, and transfer to Class HH all Human Health – Fish criteria for Class B(WW), Class B(LW) and Class B(CW) designated waters and Human Health – F & W criteria from Class C designated waters.

Additional information on Iowa's Water Quality Standards and the Department's rules can be found on the Department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

These amendments will become effective March 22, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [61.3(1), 61.3(3), 61.3(5), 61.3(7)] is being omitted. These amendments are identical to those published under Notice as **ARC 4505B**, IAB 9/14/05.

[Filed 1/27/06, effective 3/22/06]  
[Published 2/15/06]

[For replacement pages for IAC, see IAC Supplement 2/15/06.]

**ARC 4896B****ENVIRONMENTAL PROTECTION  
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.304, 455B.305, 455B.306, 455B.310 and 455D.7, the Environmental Protection Commission hereby amends Chapter 101, "Solid Waste Comprehensive Planning Requirements," Iowa Administrative Code.

The amendments pertain to solid waste comprehensive planning and the disposal of solid waste by planning areas in sanitary landfills outside the planning area. The amendments are needed to implement 2005 Iowa Acts, chapter 31 [House File 399]. The amendments add some flexibility for planning areas in addressing the comprehensive planning requirements. Under these amendments, a planning area that closes all of its municipal solid waste sanitary landfills and uses a transfer station to send all waste to a Resource Conservation and Recovery Act Subtitle D compliant sanitary landfill located in another planning area is allowed to retain its autonomy for solid waste comprehensive planning purposes.

Notice of Intended Action was published in the November 9, 2005, Iowa Administrative Bulletin as **ARC 4650B**. No comments were received during the public comment period,

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

and therefore no changes were made to the amendments as proposed and no responsiveness summary is needed.

These amendments are intended to implement Iowa Code sections 455B.304, 455B.305, 455B.306, 455B.310 and 455D.7.

These amendments shall become effective March 22, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [101.12 to 101.14] is being omitted. These amendments are identical to those published under Notice as **ARC 4650B**, IAB 11/9/05.

[Filed 1/27/06, effective 3/22/06]  
[Published 2/15/06]

[For replacement pages for IAC, see IAC Supplement 2/15/06.]

**ARC 4894B****ENVIRONMENTAL PROTECTION  
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.304 and 455D.7, the Environmental Protection Commission hereby adopts Chapter 123, "Regional Collection Centers and Mobile Unit Collection and Consolidation Centers," and rescinds Chapter 211, "Grants for Regional Collection Centers of Conditionally Exempt Small Quantity Generators and Household Hazardous Wastes," and adopts new Chapter 211, "Financial Assistance for the Collection of Household Hazardous Materials and Hazardous Waste from Conditionally Exempt Small Quantity Generators," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 9, 2005, as **ARC 4648B**. No public comment was received regarding these rules, and therefore no changes were made to the rules and no responsiveness summary is needed. These rules are identical to those published under Notice.

Chapter 211 is rescinded; however, the requirements are split into two new chapters and updated. New Chapter 211 is dedicated to the financial assistance to Regional Collection Centers (RCCs) and Mobile Unit Collection and Consolidation Centers (MUCCCs). New Chapter 123 is dedicated to the permitting requirements for Regional Collection Centers and Mobile Unit Collection and Consolidation Centers.

In Chapter 211, the application ranking has been relocated from the rules to the application guidelines to allow greater flexibility in funding projects that best meet the intent and goals of the program. New Chapter 211 also outlines the eligibility requirements for semiannual assistance payments to RCCs and MUCCCs.

Chapter 123 consolidates all the RCC permitting requirements from 567—Chapters 102, 104 and 211 into one chapter. In this reorganization, there are several changes to the RCC permit requirements. First, all permitted RCCs are required to file a semiannual report, rather than just those RCCs seeking reimbursement. Second, the closure plan requirements are revised so that they are more applicable to the concerns of an RCC. Furthermore, an education plan is required as part of the permit.

Chapter 123 also establishes a new permit, Mobile Unit Collection and Consolidation Center (MUCCC), for collection systems that utilize mobile collection events on a regular basis, but do not provide public access to a fixed facility. The permit requirements for an MUCCC are very similar to the RCC permit requirements; however, the MUCCC must provide the dates and locations of the mobile events. The events must total at least 16 hours per month in each county served.

Finally, 2005 Iowa Acts, House File 602, amended Iowa Code chapter 455F, which is the basis for RCC reimbursements. 2005 Iowa Acts, House File 602, changes the transition of the moneys the Department utilizes for RCCs from a primary allocation from establishment grants to reimbursement. Moreover, 2005 Iowa Acts, House File 602, allows eligible private agencies that collect household hazardous materials (HHM) and are part of a comprehensive plan to receive assistance. Thus, minor amendments to administrative rules reflect these changes to the Iowa Code.

These rules are intended to implement Iowa Code sections 455B.304, 455D.7, and 455F.8 and Iowa Code Supplement section 455F.8A.

These rules will become effective March 22, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Chs 123, 211] is being omitted. These rules are identical to those published under Notice as **ARC 4648B**, IAB 11/9/05.

[Filed 1/27/06, effective 3/22/06]  
[Published 2/15/06]

[For replacement pages for IAC, see IAC Supplement 2/15/06.]

**ARC 4863B****LAW ENFORCEMENT  
ACADEMY[501]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 80B.11, the Iowa Law Enforcement Academy with approval of the Iowa Law Enforcement Academy Council hereby amends Chapter 3, "Certification of Law Enforcement Officers," Chapter 8, "Mandatory In-Service Training Requirements," Chapter 9, "Jailer Training," and Chapter 10, "Reserve Peace Officers," Iowa Administrative Code.

The current Chapters 3, 8, 9, and 10 reflect previous training required by the Academy in health-related matters. Chapter 3 reflects that certified peace officers must be trained as First Responders. This training as First Responder is no longer required. Certified peace officers must receive certification from the Department of Public Health as an Iowa Law Enforcement Emergency Care Provider (ILEECP). National standards now require that peace officers complete training in the use of Automated External Defibrillator (AED) and foreign body airway obstruction for all age groups. These amendments update the Iowa Administrative Code to reflect the current state and national required standards.

These amendments were published under Notice of Intended Action in the October 26, 2005, Iowa Administrative Bulletin as **ARC 4592B**. Any interested person could make written suggestions or comments on the proposed amendments on or before November 17, 2005. A public hearing

## LAW ENFORCEMENT ACADEMY[501](cont'd)

was held on November 17, 2005, at 11 a.m. in the conference room at Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa. No persons attended the public hearing. No written comments were received.

The information from the public hearing was presented to the Iowa Law Enforcement Academy Council on November 17, 2005, and again on December 1, 2005, at regular meetings. The Council approved that the amendments as published in the Notice of Intended Action be Adopted and Filed.

These amendments are intended to implement Iowa Code section 80B.11.

These amendments will become effective March 22, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 3, 8 to 10] is being omitted. These amendments are identical to those published under Notice as **ARC 4592B**, IAB 10/26/05.

[Filed 1/20/06, effective 3/22/06]  
[Published 2/15/06]

[For replacement pages for IAC, see IAC Supplement 2/15/06.]

**ARC 4882B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners hereby amends Chapter 41, "Licensure of Chiropractic Physicians," Chapter 44, "Continuing Education for Chiropractic Physicians," Chapter 45, "Discipline of Chiropractic Physicians," and Chapter 46, "Fees," Iowa Administrative Code.

The amendments amend subrule 41.8(2) to allow a licensee who renews within six months of a new licensing cycle to wait until the subsequent renewal period to renew the license, correct discipline rules by removing references to a lapsed license, clarify the number of hours a teacher may claim for teaching a course, provide for continuing education hour credit to be claimed for proctoring the national examination and rescind rule 645—46.1(147,154) and adopt a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees such as on-line renewals. The Board prenoticed the rule to provide licensees and the public an opportunity to comment on the proposed rule. The Board did not receive any comments during the prenotice period.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 9, 2005, as **ARC 4606B**. A public hearing was held on November 29, 2005, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

The amendments were adopted by the Board of Chiropractic Examiners on January 19, 2006.

These amendments will become effective March 22, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 151 and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [41.8(2), 44.3(2)"b," 45.2(25), 46.1] is being omitted. These amendments are identical to those published under Notice as **ARC 4606B**, IAB 11/9/05.

[Filed 1/27/06, effective 3/22/06]  
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[For replacement pages for IAC, see IAC Supplement 2/15/06.]

**ARC 4865B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Nursing Home Administrators hereby amends Chapter 141, "Licensure of Nursing Home Administrators," Chapter 144, "Discipline for Nursing Home Administrators," and Chapter 145, "Fees," Iowa Administrative Code.

These amendments correct discipline rules by removing references to a "lapsed license," adopt a new subrule for mandatory reporter training which is required by the Code of Iowa, and rescind rule 145.1(147,155) and adopt a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees such as on-line renewals. The Board prenoticed the rule to provide licensees and the public an opportunity to comment on the proposed rule. The Board did not receive any comments during the prenotice period.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 9, 2005, as **ARC 4612B**. A public hearing was held on November 29, 2005, from 8:30 to 9 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

The amendments were adopted by the Board of Examiners for Nursing Home Administrators on January 19, 2006.

These amendments will become effective March 22, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 155 and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [141.9(3)"a," 141.9(8), 144.2(28), 145.1] is being omitted. These amendments are identical to those published under Notice as **ARC 4612B**, IAB 11/9/05.

[Filed 1/20/06, effective 3/22/06]  
[Published 2/15/06]

[For replacement pages for IAC, see IAC Supplement 2/15/06.]

**ARC 4881B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Respiratory Care Examiners hereby amends Chapter 263, "Discipline for Respiratory Care Practitioners," Iowa Administrative Code.

The amendment provides the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 21, 2005, as **ARC 4739B**. A public hearing was held on January 10, 2006, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. However, the Assistant Attorney General commented that the wording of the last sentence of subrule 263.5(3) needed to be clarified and that the Iowa Code reference in subrule 263.5(4) needed to be corrected. The Board approved these changes.

Subrules 263.5(3) and 263.5(4) now read as follows:

**"263.5(3)** Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe in order to maintain the licensee's confidentiality.

**"263.5(4)** Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1)."

This amendment was adopted by the Board of Respiratory Care Examiners on January 23, 2006.

This amendment will become effective March 22, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 152B and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this rule [263.5] is being omitted. With the exception of the changes noted above, this rule is identical to that published under Notice as **ARC 4739B**, IAB 12/21/05.

[Filed 1/27/06, effective 3/22/06]

[Published 2/15/06]

[For replacement pages for IAC, see IAC Supplement 2/15/06.]

**ARC 4864B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby amends Chapter 328, "Continuing Education for Physician Assistants," Chapter 329, "Discipline for Physician Assistants," and Chapter 330, "Fees," Iowa Administrative Code.

These amendments correct discipline rules by removing references to a "lapsed license," correct statements in continuing education criteria, and rescind rule 645—330.1(148C) and adopt a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees such as on-line renewals. The Board prenoticed the fee rule to provide licensees and the public an opportunity to comment on the proposed rule. The Board did not receive any comments during the prenotice period.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 9, 2005, as **ARC 4615B**. A public hearing was held on November 29, 2005, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No comments were received. These amendments are identical to those published under Notice.

The amendments were adopted by the Board of Physician Assistant Examiners on January 18, 2006.

These amendments will become effective March 22, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 148C and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule **328.3(2)**, paragraph "c," as follows:

c. Completing a minimum requirement of 40 hours which shall be earned in Category I and Category II.

ITEM 2. Amend subrule 329.2(25) as follows:

**329.2(25)** Representing oneself as a physician assistant when one's license has been suspended or revoked, or when one's license is ~~lapsed or has been placed~~ on inactive status.

ITEM 3. Rescind rule 645—330.1(148C) and adopt the following new rule in lieu thereof:

**645—330.1(148C) Fees.** All fees are nonrefundable.

**330.1(1)** Application fee for a license is \$120.

**330.1(2)** Fee for a temporary license is \$120.

**330.1(3)** Renewal of license fee is \$120.

**330.1(4)** Late fee for failure to renew before expiration is \$60.

**330.1(5)** Reactivation fee is \$180.

**330.1(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**330.1(7)** Fee for verification of license is \$20.

**330.1(8)** Returned check fee is \$25.

**330.1(9)** Disciplinary hearing fee is a maximum of \$75.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148C and 272C.

[Filed 1/20/06, effective 3/22/06]

[Published 2/15/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/15/06.

**ARC 4888B****REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 42, "Adjustments to Computed Tax," Chapter 46, "Withholding," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVIII, No. 13, p. 1015, on December 21, 2005, as **ARC 4769B**.

Item 1 amends subrule 42.2(10), paragraph "a," for individual income tax to provide that the new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. In addition, this subrule is amended to provide that the investment tax credit must be amortized over a five-year period for projects approved under the enterprise zone program after July 1, 2005.

Item 2 amends subrule 42.2(10), paragraph "b," to provide that an eligible business under the enterprise zone program whose project involves biotechnology-related processes may elect to receive a refund of unused investment credit for tax years ending on or after July 1, 2005.

Item 3 amends subrule 42.2(11) and the implementation clause for rule 701—42.2(422) to provide for an additional research activities credit for expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa.

Item 4 amends rule 701—42.19(15) for individual income tax to provide that the new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program.

Item 5 adopts new rule 701—42.27(15), which provides for tax credits available under the high quality job creation program for individual income tax.

Item 6 adopts new rule 701—42.28(15E,422), which provides for an economic development region revolving fund tax credit for individual income tax.

Item 7 amends the implementation clause for rule 701—46.9(15) to correct a cross reference to an Iowa Code section.

Item 8 amends rule 701—52.10(15) to provide that the new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program.

Item 9 rescinds rule 701—52.14(422) and adopts new rule 701—52.14(15E), which provides for tax credits available for businesses approved under the enterprise zone program.

Item 10 amends rule 701—52.22(15) for corporation income tax to provide that the new capital investment program was repealed on July 1, 2005, and has been replaced with the

high quality job creation program. This is similar to the change in Item 4.

Item 11 adopts new rule 701—52.28(15), which provides for tax credits available under the high quality job creation program for corporation income tax. This is similar to the change in Item 5.

Item 12 adopts new rule 701—52.29(15E,422), which provides for an economic development region revolving fund tax credit for corporation income tax. This is similar to the change in Item 6.

Item 13 amends rule 58.12(15) for franchise tax to provide that the new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. This is similar to the change in Items 4 and 10.

Item 14 adopts new rule 701—58.17(15), which provides for tax credits available under the high quality job creation program for franchise tax.

Item 15 adopts new rule 701—58.18(15E,422), which provides for an economic development region revolving fund tax credit for franchise income tax. This is similar to the change in Items 6 and 12.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective March 22, 2006, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code Supplement chapters 15, 15E and 422.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 42, 46, 52, 58] is being omitted. These amendments are identical to those published under Notice as **ARC 4769B**, IAB 12/21/05.

[Filed 1/27/06, effective 3/22/06]

[Published 2/15/06]

[For replacement pages for IAC, see IAC Supplement 2/15/06.]

**ARC 4875B****SECRETARY OF STATE[721]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State hereby adopts an amendment to Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

The amendment revises the instructions for the application form for a temporary waiver of accessibility requirements for polling places. The revised instructions increase the documentation required to apply for a waiver. In the past year, the Secretary of State has distributed over \$600,000 in grant funds made available under the Help America Vote Act (HAVA). These grants were given to counties to make polling places accessible to persons with disabilities. In March 2005, the Secretary of State informed all counties that, after 2005, waivers would be granted only if substantial documentation supported the need for such waivers.

The amendment requires that an auditor applying for a waiver submit two additional types of documentation: letters from three elected officials from governing bodies that

SECRETARY OF STATE[721](cont'd)

include the precinct (city officials, county supervisors, or township officials) supporting the finding that there is no accessible place within the precinct that can be used for a polling place and a statement explaining why it is not reasonable to move the polling place to another, accessible location outside the precinct or to combine the precinct with another adjacent precinct that has an accessible polling location. The revised instructions also remind auditors that their duty is to make buildings used as polling places accessible on election day; buildings used for polling places are not necessarily required to be permanently accessible.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 21, 2005, as **ARC 4743B**. Two people raised questions about the proposed amendment. One person questioned whether it is appropriate to continue to offer waivers of accessibility requirements. However, the Voting Accessibility for the Elderly and Handicapped Act, which requires all polling places for federal elections to be accessible, also specifically permits the chief state election official to grant a waiver if there is no accessible place available or if an emergency temporarily makes an accessible polling place inaccessible. The other question was a procedural one.

The adopted amendment is identical to that published under Notice.

This amendment was adopted by the Secretary of State on January 25, 2006.

This amendment will become effective on March 22, 2006.

This amendment is intended to implement Iowa Code section 49.21.

The following amendment is adopted.

Amend subrule **21.50(7)**, instructions for the application for a temporary waiver of accessibility requirements, numbered paragraph **"1,"** to read as follows:

1. Describe why you are unable to provide an accessible polling place for the precinct.

a. Include the reasons that the polling place you have selected cannot be made accessible for the next election. *Remember, the polling place must be accessible on election days. Buildings used for polling places are not necessarily required to be permanently accessible.*

b. *Include letters from three elected officials from governing bodies that include this precinct (city officials, county supervisors, or township officials) supporting your finding that there is no accessible place within the precinct that can be used for a polling place.*

c. *Explain why it is not reasonable to move this polling place to another, accessible location outside the precinct or to combine this precinct with another adjacent precinct that has an accessible polling location.*

[Filed 1/25/06, effective 3/22/06]

[Published 2/15/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/15/06.

## ARC 4891B

### SOIL CONSERVATION DIVISION[27]

#### Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 466A.3, the Watershed Improvement Review Board hereby adopts new Chapter 101, "Organization and Purpose," Chapter 102, "Rules of Practice," Chapter 103, "Appointment and Terms of Members," Chapter 104, "Local Watershed Improvement Committees," Chapter 105, "Watershed Improvement Grant Program," Chapter 106, "Watershed Improvement Fund," and Chapter 107, "Public Records and Fair Information Practices," Iowa Administrative Code.

These rules provide for the Watershed Improvement Review Board and its organization, purpose and rules of practice. Provision is also made for appointment of Board members, local watershed improvement committees and the Watershed Improvement Grant Program.

These rules do not contain a waiver provision, but are subject to the Division's general waiver requirements.

These rules were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4521B**. A public hearing on the proposed rules was held on October 4, 2005. Comments received at the hearing or during the comment period were considered and incorporated in these Adopted and Filed rules where practical.

These rules were also Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4520B**. The rules adopted herein have changes from those Adopted and Filed Emergency. Those changes are detailed below.

Changes include adding references to soil and water conservation districts where needed for clarification, deleting a sentence in rule 27—101.4(466A) to clarify the kinds of meetings the Board will hold, and deleting a word from rule 27—101.5(466A) to make the provision for a quorum of the Board consistent with the enabling legislation. The rule dealing with conflict of interest at 27—101.6(466A) was also changed to clarify intent. The definition for "division" in rule 27—102.1(466A) was changed to correctly reference the enabling statute for the Division of Soil Conservation. The words "declaratory ruling" were changed to "declaratory order" throughout the rules. The process for recommending succeeding appointments to the Board was clarified in subrule 103.1(1), and the requirements for monitoring the performance of local watershed projects were adjusted in subrule 104.4(1). The term "grant agreement" was substituted for the word "contract" throughout the rules. Rule 27—105.1(466A) was changed by substituting the words "eligible applicants" for the word "projects," and the criteria to be addressed in project applications were clarified. The term "applications" was substituted for language referring to "proposals" in subrule 105.2(1). In subrule 105.2(6), the word "appropriated" was substituted for the word "available," and the amount of funds to be set aside at the time of project award was clarified. Language initially proposed in subrule 105.3(1) was deleted and replaced by the sentence, "Funds will be disbursed according to the grant agreement."

These rules are intended to implement Iowa Code Supplement chapter 466A.

## SOIL CONSERVATION DIVISION[27](cont'd)

These rules will become effective on April 3, 2006, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following **new** chapters are adopted.

## CHAPTER 101

## ORGANIZATION AND PURPOSE

**27—101.1(466A) Watershed improvement review board composition.** The watershed improvement review board shall be comprised of one member of the Agribusiness Association of Iowa; one member of the Iowa Association of Water Agencies; one member of the Iowa Environmental Council; one member of the Iowa Farm Bureau Federation; one member of the Iowa Pork Producers Association; one member of the Iowa Rural Water Association; one member of the Iowa Soybean Association; one member representing soil and water conservation districts of Iowa; one member of the Iowa Association of County Conservation Boards; one person representing the department of agriculture and land stewardship; and one person representing the department of natural resources.

Two state senators shall be appointed, one by the majority leader of the senate and one by the minority leader of the senate. Two state representatives shall be appointed, one by the speaker of the house of representatives and one by the minority leader of the house of representatives.

These members are appointed according to Iowa Code Supplement section 466A.3. The board is responsible for administering grants to local watershed improvement committees and soil and water conservation districts to promote watershed protection efforts.

**27—101.2(466A) Officers.** The officers of the board shall be the chairperson and vice chairperson. Each officer shall be elected by vote of the board for a term of one year and may be reelected by vote of the board to serve one subsequent term in the same office. Members representing the department of agriculture and land stewardship, the department of natural resources and the general assembly are not eligible to serve as an officer of the board.

**101.2(1)** The chairperson shall set the date for meetings, preside at meetings, and sign documents approved by the board.

**101.2(2)** The vice chairperson shall act in the chairperson's place when the chairperson is unable to act.

**27—101.3(466A) Staff.** The division of soil conservation of the department of agriculture and land stewardship shall provide administrative support to the board to aid in the completion of its duties.

**27—101.4(466A) Meetings.** The board shall meet at the time designated by the chairperson at least once annually and at other times the board determines are necessary. All meetings shall be held at such locations as are determined by the board.

**27—101.5(466A) Quorum.** A majority of the voting members of the board shall constitute a quorum. A majority of the voting members present during a meeting is necessary to carry out the duties and exercise the powers of the board as provided in this chapter.

**27—101.6(466A) Conflict of interest.** A voting member of the board shall abstain from participating on any issues relating to a local watershed improvement grant application submitted by a local watershed improvement committee or soil and water conservation district of which the person is a mem-

ber. A member of the general assembly shall abstain from participating on any issues relating to a watershed which is in the member's legislative district.

**27—101.7(466A) Board responsibilities.** The board shall do all of the following:

1. Award local watershed improvement grants and evaluate and review through reports the progress of local watershed improvement projects awarded grants.
2. Assist with the development of monitoring plans for local watershed improvement projects.
3. Review monitoring results before, during, and after completion of a local watershed improvement project.
4. Review costs and benefits of mitigation practices utilized by a project.
5. By January 31, annually, submit an electronic report to the governor and the general assembly regarding the progress of the watershed improvement projects during the previous calendar year.
6. Develop and adopt administrative rules pursuant to Iowa Code chapter 17A to administer this chapter.

**27—101.8(466A) Technical assistance.** The board shall elicit the expertise of other organizations for technical assistance in the work of the board. The organizations may include but are not limited to all of the following: the State University of Iowa; the Iowa State University of Science and Technology; the U.S. Geological Survey; the U.S. Department of Agriculture, Agricultural Research Service, National Soil Tilth Laboratory; the U.S. Department of Agriculture, Natural Resource Conservation Service; the Leopold Center for Sustainable Agriculture; the Iowa Association of Municipal Utilities; the Iowa chapter of the American Waterworks Association; the Iowa Water Pollution Control Association; the Iowa League of Cities; the Iowa Cattlemen's Association; the Iowa Association of Business and Industry; the Iowa Environmental Health Association; the Iowa Corn Growers Association; the Iowa Poultry Association; the Iowa Farmers' Union; and the Iowa Land Improvement Contractors Association.

These rules are intended to implement Iowa Code Supplement chapter 466A.

## CHAPTER 102

## RULES OF PRACTICE

**27—102.1(466A) Definitions.** All words and terms defined in Iowa Code Supplement chapter 466A and employed in these rules are given the definitions found in that legislation. The following words and terms used in these rules shall have the meanings hereafter ascribed to them:

"Auditor" means the auditor of the state of Iowa.

"Board" means the watershed improvement review board as established in Iowa Code Supplement section 466A.3.

"Committee" means a local watershed improvement committee as provided in Iowa Code Supplement section 466A.4.

"Division" means the division of soil conservation within the department of agriculture and land stewardship as established in Iowa Code section 161A.4.

"Eligible applicant" means a nonprofit organization authorized by the secretary of state or a soil and water conservation district.

"Fund" means the watershed improvement fund as created pursuant to Iowa Code Supplement section 466A.2.

"State" means the state of Iowa.

"Treasurer" means the treasurer of the state of Iowa.

**27—102.2(466A) Public information.** The public is invited to obtain information or make informal requests of the

## SOIL CONSERVATION DIVISION[27](cont'd)

board by addressing these matters, either orally or in writing, to the chairperson of the Iowa Watershed Improvement Review Board, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319; (515)281-6153.

**27—102.3(466A) Informal settlement of controversies.** Every possible attempt will be made to handle all complaints and controversies, whether raised by the board or by members of the public, in an informal manner.

**102.3(1)** In cases of a routine nature, the chairperson shall attempt to settle the matter. In cases indicating a need for interpretation of board policy or legal interpretation, the chairperson may defer action until after consultation with legal counsel, or the chairperson may defer action until after discussion of the subject at a board meeting.

**102.3(2)** In cases not of a routine nature, or in cases in which the efforts of the chairperson are unsuccessful, the board itself shall act to resolve the matter. In cases indicating a need for legal advice, the board may defer action until after consultation with legal counsel.

**27—102.4(466A) Declaratory orders.** On petition by an interested party who is aggrieved or adversely affected by the question contained in the petition, the board may issue a declaratory order with respect to the interpretation or applicability of any statutory provision, rule, or other written statement of the law or policy, decision, or order of the board.

**102.4(1)** Petitions shall be titled "PETITION FOR DECLARATORY ORDER" and shall include the name and address of all petitioners. The body of the petition must state the precise factual situation involved, the exact question to which an answer is desired, and the exact words, passages, sentences, or paragraphs which are the subject of inquiry.

**102.4(2)** The petition shall be filed at the office of the board at Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319.

**102.4(3)** The board will refuse to issue a declaratory order if the petition does not state with enough specificity the factual situation or the question presented; if the issuance of the order would not be in the best interests of the public; or for any other reason the board deems just and proper.

**102.4(4)** The board shall issue an order or dismiss the petition within 60 days of the filing of the petition except that when additional information is requested, the order shall be issued within 60 days following receipt of the requested information.

**27—102.5(466A) Petition for adoption of rules.** Any interested person may file with the board a written request that the board adopt, amend, or repeal a rule. The petition shall be addressed to the Iowa Watershed Improvement Review Board, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319, and shall include:

1. The names of those requesting the change.
2. The proposed rule or present rule as it would read following the desired amendment.
3. The reason for the proposed rule or amendment.
4. The statutory authority for the proposed rule or amendment.

Within 60 days following receipt of the petition, the board shall either deny the petition in writing on the merits, stating the board's reason for denial, or initiate rule-making proceedings.

These rules are intended to implement Iowa Code Supplement chapter 466A.

## CHAPTER 103 APPOINTMENT AND TERMS OF MEMBERS

### **27—103.1(466A) Appointments.**

**103.1(1)** Not later than three months prior to the end of its board member's term, each organization identified in 27—101.1(466A) shall submit to the governor a name for appointment to the board.

**103.1(2)** Not later than 60 days prior to the end of each board member's term of office, the governor shall name a successor pursuant to 103.1(1).

**27—103.2(466A) Terms.** An appointed member shall not serve more than three consecutive terms.

These rules are intended to implement Iowa Code Supplement chapter 466A.

## CHAPTER 104 LOCAL WATERSHED IMPROVEMENT COMMITTEES

**27—104.1(466A) Purpose.** A committee shall be organized for the purposes of applying for a local watershed improvement grant and implementing a local watershed project.

**27—104.2(466A) Structure.** A committee must be authorized by the secretary of state as a not-for-profit organization. The majority of the members of the committee shall represent a cause of the impairment of the watershed.

**27—104.3(466A) Governmental entities.** A federal, state or local governmental entity may not be a recipient of a grant from the board, with the exception of a soil and water conservation district. A federal, state or local governmental entity may partner with a committee to implement a local watershed project.

**27—104.4(466A) Responsibilities.** A committee shall be responsible for application for and implementation of an approved local watershed grant, including providing authorization for project bids and project expenditures under the grant.

**104.4(1)** The committee shall monitor local performance throughout the local watershed grant project and shall submit a report at six-month intervals or at a frequency set forth in the grant agreement regarding the progress and findings of the project.

**104.4(2)** The committee shall provide monitoring data before, during, and after the project's completion.

**27—104.5(466A) Audit.** A committee receiving a grant from the board may be subject to an audit performed by the auditor.

These rules are intended to implement Iowa Code Supplement chapter 466A.

## CHAPTER 105 WATERSHED IMPROVEMENT GRANT PROGRAM

**27—105.1(466A) Program purpose.** The board shall issue grant awards to eligible applicants to address water quality impairments including but not limited to agricultural runoff and drainage; stream bank erosion; municipal discharge; stormwater runoff; unsewered communities; industrial discharge; or livestock runoff.

### **27—105.2(466A) Grant awards.**

**105.2(1)** The board shall issue a request for applications.

**105.2(2)** The board shall determine the date for submission of grant requests.

## SOIL CONSERVATION DIVISION[27](cont'd)

**105.2(3)** Projects will be evaluated by the board based on criteria established in the request for applications.

**105.2(4)** Eligible applicants that have been awarded a grant by the board shall be notified not more than 60 days from the date that the request for applications closes.

**105.2(5)** Eligible applicants that have been awarded a grant by the board shall be required to sign a grant agreement with the state before any funds are disbursed. Changes to the grant agreement must be negotiated and meet with the approval of the board.

**105.2(6)** Grant awards shall be for not more than three years and shall not exceed 10 percent of the funds appropriated to the board. A grant recipient shall not be precluded from applying for future grant awards. Grant awards given by the board to an eligible applicant will have the full amount of awarded watershed improvement funds set aside for the entire project length when initially awarded.

**105.2(7)** The board may act to award less than all of the funds appropriated for this program if it deems that applications do not meet the program's objectives. Additional requests for applications may be solicited by the board if all available funds have not been expended.

**27—105.3(466A) Disbursement of funds.**

**105.3(1)** Funds will be disbursed according to the grant agreement.

**105.3(2)** An eligible applicant that fails to meet the terms and obligations of its grant agreement shall reimburse the state for the portion of the grant received attributed to this failure.

**27—105.4(466A) Reports.**

**105.4(1)** Eligible applicants that have been awarded a grant by the board shall submit a written and electronic report at six-month intervals. This report shall include but not be limited to a statement of expenditures; progress toward performance measures established in the grant agreement; progress toward deliverables established in the grant agreement; monitoring methods and results; and the time line for project completion.

**105.4(2)** Eligible applicants that have been awarded a grant by the board shall submit a final written and electronic report at the conclusion of the grant agreement. This report shall include but not be limited to a final statement of expenditures; performance measures established in the grant agreement; deliverables established in the grant agreement; monitoring methods and results; and findings of the project.

These rules are intended to implement Iowa Code Supplement chapter 466A.

## CHAPTER 106

### WATERSHED IMPROVEMENT FUND

**27—106.1(466A) Purpose.** The fund shall be used for the enhancement of water quality through a variety of impairment-based, locally directed watershed improvement projects; to positively affect the management and use of water for the purposes of drinking, agriculture, recreation, sport and economic development; and to ensure public participation in the process of determining priorities related to water quality.

**27—106.2(466A) Administration.** The treasurer shall administer the fund upon the direction of the board.

**106.2(1)** Moneys in the fund shall be used exclusively for carrying out the purposes of the fund.

**106.2(2)** Moneys appropriated to the fund and any other moneys available to and obtained or accepted by the treasurer for placement in the fund shall be deposited in the fund.

**106.2(3)** Moneys appropriated to the treasurer and deposited in the fund shall not be used by the treasurer for administrative purposes.

**106.2(4)** Notwithstanding Iowa Code section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

**106.2(5)** Notwithstanding Iowa Code section 8.33, moneys in the fund that remain unencumbered or unobligated at the end of the fiscal year shall not revert, but shall remain available for the same purpose in the succeeding fiscal year.

These rules are intended to implement Iowa Code Supplement chapter 466A.

## CHAPTER 107

### PUBLIC RECORDS AND

### FAIR INFORMATION PRACTICES

The Iowa watershed improvement review board hereby adopts, with the following exceptions and amendments, rules of the governor's task force on uniform rules of agency procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

**27—107.1(17A,22) Definitions.** As used in this chapter:

"Board" in these rules means the Iowa watershed improvement review board.

**27—107.3(17A,22) Requests for access to records.**

**107.3(1)** Location of record. In lieu of the words "(insert agency head)", insert "chairperson". In lieu of the words "(insert agency name and address)", insert "Iowa Watershed Improvement Review Board, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319".

**107.3(2)** Office hours. In lieu of the words "(insert customary hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

**107.3(7) Fees.**

c. Supervisory fee. In lieu of "(specify time period)", insert "one hour".

**27—107.6(17A,22) Procedure by which additions, disallows, or objections may be entered into certain records.**

In lieu of the words "(designate office)", insert "Iowa watershed improvement review board".

**27—107.9(17A,22) Public records; confidential records.**

All records in the possession of the board other than confidential records are public records. The board shall deem to be confidential those categories of records enumerated in Iowa Code section 22.7 which are in its possession.

**27—107.10(17A,22) Personally identifiable information.** Agency records include project applications, reports, and board actions to approve or deny payment. This information is collected pursuant to the authority of Iowa Code Supplement chapter 466A and is stored in the watershed improvement review board files in the division of soil conservation. Any personally identifiable information contained in these records shall be confidential.

**27—107.11(17A,22) Data processing.** No data processing system collates or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

## SOIL CONSERVATION DIVISION[27](cont'd)

These rules are intended to implement Iowa Code section 22.11.

[Filed 1/27/06, effective 4/3/06]

[Published 2/15/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/15/06.

**ARC 4876B**

## **TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 8D.3, the Iowa Telecommunications and Technology Commission hereby amends Chapter 1, "Description of Organization," Chapter 5, "Purchasing," and Chapter 17, "Miscellaneous," Iowa Administrative Code.

These amendments are designed to update the Iowa Telecommunications and Technology Commission's rules to reflect recent organizational changes and to implement statutory changes made to Iowa Code chapter 8D pursuant to 2005 Iowa Acts, chapter 100. These amendments reflect recent changes in organizational structure creating agency efficiencies, comply with legislation regarding noticing bids and solicitations, and add detail to the transfer and disposal of assets by the agency. The amendments also clarify agency administrative rules and are mostly nonsubstantive in nature.

These amendments were published under Notice of Intended Action in the December 21, 2005, Iowa Administrative Bulletin as **ARC 4754B**. A public hearing was held January 10, 2006. No comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 8D.

These amendments will become effective March 22, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.5, 1.5(2), 5.2(1)"a," 5.4, 17.3, 17.3(4), 17.3(5)] is being omitted. These amendments are identical to those published under Notice as **ARC 4754B**, IAB 12/21/05.

[Filed 1/26/06, effective 3/22/06]

[Published 2/15/06]

[For replacement pages for IAC, see IAC Supplement 2/15/06.]

**ARC 4878B**

## **UTILITIES DIVISION[199]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.4 and Iowa Code Supplement sections 476B.10 and 476C.7, the Utilities Board (Board) gives notice that on January 26, 2006, the Board issued an order in Docket No. RMU-05-8, In re: Certification of Eligibility for Wind Energy and Renewable

Energy Tax Credits, "Order Adopting Rules." The Board is adopting new rules 199 IAC 15.18(476B) and 15.19(476C). The new rules adopt procedures and filing requirements to facilitate the Board's determination of whether an energy facility is eligible for the wind energy production tax credits under Iowa Code Supplement chapter 476B or renewable energy tax credits under Iowa Code Supplement chapter 476C. The Governor signed 2005 Iowa Acts, Senate File 390, the legislation creating a new Iowa Code chapter 476C, on June 15, 2005, and 2005 Iowa Acts, House File 882, amending Iowa Code chapter 476B on June 16, 2005.

This rule making was initiated concurrently with an emergency rule making adopting the rules as initially proposed. The emergency rule making was identified as Docket No. RMU-05-7. The emergency rules were adopted on June 20, 2005, and published in IAB Vol. XXVIII, No. 2 (7/20/05) p. 106, as **ARC 4342B**. In compliance with Iowa Code section 17A.4(2), the Board found in its Order that notice and public participation were impracticable because of the immediate need for a new rule to implement 2005 Iowa Acts, Senate File 390, citing the fact that the Board's staff had already been contacted by several persons who were interested in applying for a determination of eligibility and those persons wanted to know what information should be included in their applications to determine eligibility. Rather than attempting to inform only those who inquired on an ad hoc basis, the Board adopted emergency rules to apply to applications under both Iowa Code Supplement chapters 476B and 476C.

The Notice of Intended Action for Docket No. RMU-05-8 was published in IAB Vol. XXVIII, No. 2 (7/20/05) p. 98, as **ARC 4341B**. On August 9, 2005, the Board received written statements of positions. On September 21, 2005, an oral presentation was held. On September 30, 2005, the Board issued an "Order Requesting Additional Comments" from the participants. On October 14, 2005, additional comments were received. Comments have been received from Carroll County Projects (Carroll County), Clipper Windpower, Inc. (Clipper), FPL Energy, LLC (FPL), Iowa Farm Bureau Federation (Farm Bureau), Iowa Winds, LLC (Iowa Winds), Interstate Power and Light Company (IP&L), the Consumer Advocate Division of the Department of Justice (Consumer Advocate), and Midwest Renewable Energy Projects, LLC (MREP), which represents Northern Iowa Windpower II LLC, Northern Iowa Windpower III LLC, Winnebago Windpower LLC, Barton Windpower LLC, Barton Windpower II LLC, and Winnebago Windpower II LLC. Consumer Advocate filed additional comments on October 17, 2005, and Edward Woolsey (Woolsey) E-mailed comments on October 1 and 19, 2005.

In addition to the public comment received, the Administrative Rules Review Committee (Committee) voted to object to the provisions of the emergency rules as those rules implement Iowa Code Supplement chapter 476B; the Committee did not object to the rules as they implemented Iowa Code Supplement chapter 476C. The objection was published in IAB Vol. XXVIII, No. 8 (10/12/05) p. 619. The objection, which will be discussed in greater detail below, addressed the issues of an executed purchase power agreement, the use of the emergency rule-making procedure in the adoption of the rules prior to the effective date of the statute, and direct and indirect ownership.

Overall, Iowa Code Supplement chapters 476B (for large wind energy projects) and 476C (for smaller renewable energy projects) are very similar, sufficiently similar that the Board adopted a single set of emergency rules to implement both statutes and proposed to adopt a single set of final rules in this docket. However, several of the commenters pointed

## UTILITIES DIVISION[199](cont'd)

out various small differences in the language of the two chapters and argued that those differences are significant. FPL and Clipper both recommended that specific rules be adopted for each chapter and the Committee's objection only went to the rules as they applied to chapter 476B projects. The Board will adopt this recommendation. The rules for chapter 476B projects will be in 199 IAC 15.18(476B) and the rules for chapter 476C projects will be in 199 IAC 15.19(476C). In addition to clarifying the rules, this separation will make the process easier for proposing and considering future amendments that may apply only to small or large projects, but not both.

With the rules being separated, the comments addressing the rules as they apply to Iowa Code Supplement chapter 476B will be discussed first; discussion regarding the rules as they apply to Iowa Code Supplement chapter 476C will follow. Because the comments reflect various views, often in conflict with the emergency rules, the Board will provide extensive summaries of some of the comments.

Iowa Code Supplement section 476B.5(1)"e" requires, among other things, that the applicant for tax credits provide "[a] copy of an executed power purchase agreement or other agreement to purchase electricity upon completion of the project." In the emergency rules and in the proposed rules, the Board interpreted this provision as requiring (a) a signed power purchase agreement (PPA) or (b) some other agreement, which may or may not be signed. Some commenters supported the Board's interpretation; others opposed it and said a signed contract was essential.

Clipper believes that the phrase "other agreement" cannot be construed to allow substitution of either a statement of intended action, a perceived statutory obligation, or any document other than one that contains an offer, acceptance, and consideration for wind power to be purchased at a set price by designated parties.

As far as the argument that a utility has Public Utility Regulatory Policies Act of 1978 (PURPA) requirements to purchase wind power from a qualifying facility, Clipper believes this argument is without merit. Clipper argues that federal law cannot create a de facto PPA, particularly given the significance of an executed PPA in establishing project economic viability. Additionally, Clipper notes that the purchase obligation under PURPA may be terminated in certain circumstances under the Energy Policy Act of 2005.

FPL believes the legislature recognized that a signed PPA is the best indicator of a project's viability and likelihood of success. Therefore, the Board should not rely on anything less than that, such as a draft, affidavit, or market participant form from an independent system operator. FPL would consider an "other agreement" to pertain to a Purchase and Sale Agreement which is executed prior to the initiation of construction setting forth the terms and conditions that will govern the sale of the facility to the load-serving entity. A second form of an "other agreement" FPL would accept is an agreement which shows that a merchant plant plans at some time in the future to sell into a nodal-based congestion management system (i.e., Midwest Independent Transmission System Operator's (MISO) Day 2 market). FPL notes that a market participant form is an administrative form and does not capture the intent of either party regarding the construction of a wind energy facility. FPL believes it is clear that the legislature intended the phrase "at the completion of the project" to describe when electricity was to be purchased and not to imply that the agreement was to be provided when the project was complete.

Iowa Winds believes the Board has correctly interpreted the phrase "other agreement to purchase electricity" when it

found that facilities meeting the definition of Qualifying Facility under PURPA satisfied the requirement. Iowa Winds also argues that any changes to the rules should not impact the existing queue.

IPL argues the legislature added the "other agreement to purchase electricity" language only to ensure that a contract not titled "purchase power agreement" would not be disqualified for lack of that specific title as long as the agreement bound a potentially qualifying facility to sell electricity and another party to buy electricity. IPL said the rules must be amended to reflect the legislative intent as articulated by the Committee.

MREP states the following agreements would satisfy the "other agreement to purchase electricity": an executed PPA prior to project completion; an executed facility purchase agreement prior to project completion; or, in the case of a merchant facility, a Market Participation Agreement combined with a "generation asset registration confirmation code," which takes place 30 days prior to commercial operation. Additionally, it could include a Qualifying Facility PPA that was provided on or before commercial operation since it would take time to get a final agreement.

Consumer Advocate maintains that the "other agreement to purchase electricity" was intended to include other agreements or power purchase obligations that may be different from more common purchase power contracts. Consumer Advocate believes the legislative intent was to extend eligibility beyond the traditional PPA to include a broad range of applicants and renewable energy projects. Although Consumer Advocate acknowledges that not requiring a PPA until the project is completed could frustrate the timely development and operation of alternative energy resources in Iowa, it disagrees that the solution is to require that the initial application include the executed PPA. Consumer Advocate notes that there are many reasons why developers may have difficulty obtaining a PPA and that even with an executed PPA, it is not certain the project will be operational in 18 months.

On September 13, 2005, the Committee voted to object to the Board's emergency rules. The objection was issued on September 21, 2005; with respect to the executed PPA issue, it provides as follows:

The committee objects to paragraph 199 IAC 15.18(1)"d," relating to the required documentation to demonstrate a market for the wind energy, on the grounds that it is beyond the authority of the Utilities Board. House File 882 requires, in §166: "*A copy of an executed power purchase agreement or other agreement to purchase electricity...*" The rule language states: "*If the power purchase agreement or other agreement has not yet been finalized and executed, the board will accept a binding statement from the applicant that designates which party will be eligible to apply for the renewable energy tax credit; this designation shall not be subject to change.*" The committee believes that the language of the Act clearly demonstrates a legislative intent that only an *executed* power purchase agreement or other *executed* agreement that has a similar force and effect can be accepted in the application process.

The Committee, which is a bipartisan, bicameral committee of the General Assembly formed pursuant to Iowa Code section 17A.8, interpreted the statute to require either (a) a signed power purchase agreement or (b) some other agreement, which must also be signed. The Board did not have the benefit of this legislative history at the time it was adopting the emergency rules and issuing the notice of proposed rule making, and the Board believes that, in light of the information available to it, the Board's original interpretation of the statute was a reasonable one. However, in light of this additional legislative history, the Board will amend the final rules

## UTILITIES DIVISION[199](cont'd)

to require that any application for chapter 476B tax credits must include "an executed power purchase agreement or some other executed agreement to purchase electricity."

This leaves the question of defining "agreement" for purposes of the "other agreement" alternative. During the rule-making proceedings, the Board asked the parties for additional comment regarding the appropriate interpretation of this language; that is, to specify what other agreements should be sufficient to satisfy this requirement. The comments tended to fit into two categories: One group argued that only an agreement that is, in fact, a power purchase agreement (but fails to identify itself as such) can satisfy the requirement. At the opposite extreme, another group argued that just about any agreement that gives evidence of an intent to construct and operate a facility should be sufficient. The Board believes that neither of these extremes is appropriate for adoption in the final rules.

The word "agreement" should be construed according to its ordinary legal meaning. Black's Law Dictionary defines "agreement," in relevant part, as follows:

A coming together of minds; a coming together in opinion or determination; the coming together in accord of two minds on a given proposition.

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Although often used as synonymous with "contract," agreement is a broader term; e.g. an agreement might lack an essential element of a contract. The bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(Black's Law Dictionary, Fifth Ed., p. 62, 1979.) Thus, an agreement requires (a) at least two parties and (b) most, but not necessarily all, of the essential elements of a contract. Further, as discussed above, it must be executed. The Board therefore believes that an executed "other agreement" must include each of the following elements: (1) execution by at least two parties; (2) the subject matter must include a commitment to purchase electricity from the facility upon completion of the project; and (3) it must include most, but not necessarily all, of the essential elements of a contract. The adopted rules will reflect this interpretation.

The second major issue for the chapter 476B rules is the ownership requirements. Many of the comments filed supported the notion that the Board should adopt strict ownership limitations in order to prevent any single person or other legal entity from owning, directly or indirectly, more than one or two of the approved projects.

Clipper states that the Board should not be constrained by corporate legal fiction such as different LLC names or structures for each project, and recommends that the Board's rule focus on the equity holders or taxpayers receiving the ultimate direct benefit of the anticipated tax credit for purpose of determining any limitations on ownership of multiple facilities. Clipper suggests that in the amended rule, the Board strike the "self-certification" language and reword the information requirement on ownership to echo the provisions of Iowa Code Supplement section 476B.6(5) to include the structure of the facility ownership, the participants in facility ownership who will have income tax responsibilities and tax credit benefits passed through to them for personal and corporate tax purposes, and the percentage of equity interest held by each participant in the facility ownership.

Iowa Winds asserts that neither the statute nor public policy provides a basis for the Board to look past the legal or corporate status of the owner. By doing so, the application process will be needlessly complicated. Iowa Winds recommends that, absent clear statutory guidance, the issue could

be more adequately addressed and resolved by the legislature.

IPL asks the Board to use the implied definition of "owner" as the equity owner, found in Iowa Code Supplement section 476B.5(1), and redraft the rule to clarify that an equity owner is limited by Iowa Code Supplement section 476B.5(5) to an ownership interest in no more than two qualified facilities. IPL notes that this view is consistent with the criticism of the Board's award of credits to five entities with the same equity owners in the last sentence of the Administrative Rules Review Committee's objection to 199 IAC 15.18(1)"b."

MREP notes that, although the five companies it represents have the same equity owners, the five companies are the individual owners of the wind facilities and have separate tax identification numbers. None of the five companies owns more than two facilities.

The Committee addressed the 476B ownership issues, saying:

The committee objects to the provisions of paragraph 199 IAC 15.18(1)"b" on the grounds that it is unreasonable. The amendments to Iowa Code § 476B.5(2), as provided in House File 882, state: "[a]n owner shall not be an owner of more than two qualified facilities." Paragraph 199 IAC 15.18(1)"b" requires only "...a statement that owners meeting the eligibility requirements of Iowa Code Section 476B.5 ... are not owners of more than two eligible renewable energy facilities." The committee feels the statutory language evidences a clear legislative intent that the board should consider both direct and indirect ownership interests and not rely solely on corporate business structures to determine ownership. The committee notes that of the seven projects awarded eligibility under the House File 882 program, credits were awarded to at least five entities with the same equity owners.

The Board is again guided by the interpretation of the Committee. Iowa Code Supplement section 476B.5(1)"a" requires that an application include "information regarding the ownership of the facility, including the percentage of equity interest held by each owner." Iowa Code Supplement section 476B.5(2) then states that "an owner shall not be an owner of more than two qualified facilities." Taken together, these provisions indicate a legislative intent that the Board consider not only the legal entity that actually owns a facility but, when that legal entity is a corporation or any other owner other than a natural person, that the Board also consider the equity owners of that legal entity when applying the two-facility limitation. The rule implementing Iowa Code Supplement chapter 476B will be changed to reflect this requirement.

Given these changes in the final rules, the Board must consider what to do with the existing queue of projects. Several of the commenting parties suggested that the Board should reject all pending 476B applications and start the process over. IPL stated that the previous determinations of eligibility were irremediably flawed by the unlawful rules and should be nullified. IPL further states that once lawful rules are in place, new applications should be accepted. Both Clipper and FPL believe that an applicant should not be placed in the queue until the Board has received a completed application including all supporting documentation.

Others argue that the projects that have already been approved have some right and interest in that approval, which cannot be changed without giving them due process of law. In the "Objection to Application for Reconsideration" filed in Docket No. 199 IAC 15.18 by Northern Iowa Windpower II, LLC, Barton Windpower LLC, and Barton Windpower II, LLC, on August 26, 2005, the parties state, "The law allows only the applicant to appeal a determination, and only if the

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application is denied.” The letter goes on to say that no appeal has been filed and the eligibility determination is final.

The Board continues to believe that, based on the information available to it, the Board’s original interpretation of the statute, as expressed in the emergency rules, was a reasonable one at the time it was made, although it is not the interpretation reflected in the final rules. As such, the emergency rules are valid and effective until March 21, 2006, or until replaced by the final rules, whichever comes first. For this reason, the Board will not reject the applications and start over; they were filed in compliance with the Board’s valid rules at the time they were submitted and processed and that should not be undone.

However, that is not the end of the analysis. Each of those who received preliminary eligibility is subject to reconsideration, and the Board has docketed and suspended the approvals pending completion of this rule making. On September 13, 2005, the Board issued an “Order Granting Reconsideration” in Docket No. 199 IAC 15.18 that granted the requests filed by IPL on August 19, 2005, and Endeavor Power Partners, LLC, on August 29, 2005. The Board did not establish a procedural schedule when granting the reconsiderations since the outcome of this rule making will affect the reconsideration request. Because the Board is conforming its rules to the statutory intent as explained by the Committee, applicants will have to amend or supplement their filings to comply with the adopted rules. If some applicants cannot comply, they will lose their position in the queue.

Therefore, the Board believes that, as of the effective date of the new rules, applicants with approved applications that are subject to rehearing will have to file amendments or supplements to their applications, including an executed power purchase agreement or other executed agreement, as described above. Further, to the extent a single person or other legal entity holds an equity interest in more than two projects in the queue as of the effective date of the final rules, the Board will remove facilities involving that person or entity from the queue, beginning with those applications that were last filed, until that person or other legal entity holds an equity interest in no more than two projects.

This arrangement will give those entities currently holding approved applications up to the effective date of the final rules to amend or supplement their filings to meet the new requirements. The Board believes this is a reasonable and adequate time to allow, particularly when it is combined with the time they have already had to negotiate a power purchase agreement or other agreement, that is, the time since their original application was approved in July or August of 2005.

While Iowa Code Supplement chapters 476B and 476C are similar, they are not identical. For example, Iowa Code Supplement section 476C.3(1)“e” does not require an executed agreement, and the statute makes it clear that the purpose of requiring an agreement is to designate which party, the producer or purchaser, is eligible to apply for tax credit certificates. There is no basis for requiring an executed agreement for chapter 476C applicants.

In addition, Iowa Code Supplement chapters 476B and 476C differ on ownership criteria. Two commenters addressed the ownership issue for chapter 476C projects.

Carroll County believes that the intent of the legislature is relatively clear, expecting at least 51 percent of qualifying projects to be owned by certain defined persons, who presumably would receive the benefits associated with that ownership. Carroll County submits that as long as both the formal structure and the underlying expected financial benefit stream meet the 51 percent standard, the project should be el-

igible for credits. This determination can be made when the investment terms are first negotiated or at completion of the project. With respect to ownership by family members, Carroll County asserts that the rule should not preclude eligibility simply because applicants are related. However, the rule should not allow an individual to acquire additional tax credit eligibility through ownership by a minor child or other dependents.

Farm Bureau advocates that the Board’s rule should facilitate local ownership of wind energy facilities and be consistent with chapter 476C requirements. Farm Bureau believes that Iowa Code Supplement section 476C.1(6)“b” provides some guidance as to the intent of the legislature for ownership that is different from the requirements for an eligible facility in Iowa Code Supplement section 476B.1(4).

As previously discussed, chapter 476B establishes ownership limits and requires that applicants identify their equity owners. This indicates a legislative intent that the Board consider equity owners when applying the ownership limit.

Iowa Code Supplement chapter 476C is different. It includes a limit on ownership and requires that an application include information regarding the ownership of the facility, but it also includes a specific list of eligible types of owners. Specifically, Iowa Code Supplement section 476C.3(5) provides that an “owner meeting the requirements of section 476C.1, subsection 6, paragraph “b” shall not be an owner of more than two eligible renewable energy facilities.”

Iowa Code Supplement section 476C.1(6)“b” then provides that any eligible renewable energy facility must be at least 51 percent owned by one or more of any combination of the following:

1. A resident of this state;
2. Any of the following, as defined in section 9H.1:
  - a. An authorized farm corporation;
  - b. An authorized limited liability company;
  - c. An authorized trust;
  - d. A family farm corporation;
  - e. A family farm limited liability company;
  - f. A family trust;
  - g. A revocable trust; or
  - h. A testamentary trust;
3. A small business as defined in section 15.102;
4. An electric cooperative association organized pursuant to chapter 499;
5. An electric cooperative association that has members organized pursuant to chapter 499;
6. A cooperative corporation organized pursuant to chapter 497 or a limited liability corporation organized pursuant to chapter 490A and meeting other requirements; or
7. A school district.

Thus, Iowa Code Supplement chapter 476C is quite specific in listing the entities that are eligible majority owners of qualifying projects. The Board finds no statutory authorization in this chapter to look through these listed entities to apply the ownership limits of Iowa Code Supplement section 476C.3(5), and the current ownership rules will be retained for chapter 476C projects.

Both chapters provide that if a project is not operational within 18 months after its approval, it shall cease to be an eligible facility. The Board requested comment concerning the possibility of adopting interim milestones so that nonviable projects could be eliminated sooner to open up new capacity in the queue. Several comments were received, but there was no consensus on appropriate milestones. In reviewing the comments, the Board is doubtful that a milestone approach would be easy to administer or would significantly shorten

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the 18-month period for nonviable projects, particularly because the potentially noncompliant applicant would have to be given notice and an opportunity to show why the project should not be found ineligible. The Board will not adopt a milestone approach at this time for either chapter 476B or 476C projects.

A final issue, which is common to both chapters and on which the Board requested comments, is allocation of small capacity amounts among eligible applicants. In practice, the Board has withheld allocation of small amounts of remaining capacity, balancing the potential benefit of designating a small portion of an applicant's capacity as eligible, with the potentially greater harm of prematurely triggering the facility's 18-month period for becoming operational or losing eligibility. Several suggestions were received, but the administrative costs appear to outweigh any potential benefits. Rather than adopt a procedure in rules that will likely prove administratively cumbersome and costly, the Board will continue to withhold fractional capacity amounts (i.e., amounts less than the capacities of the next-eligible or "next-date" applicants in the queue). However, if any of these "next-date" applicants petition the Board to allocate the remaining capacity amount according to 199 IAC 15.18(5) or 199 IAC 15.19(5), the Board will contact all "next-date" applicants, inform them of the potential harm of triggering the 18-month deadline under 199 IAC 15.18(4), and allow them to opt out of the allocation while maintaining their place in the queue. The remaining capacity would then be allocated to all "next-date" applicants except those who choose to opt out.

Because the amendments are in response to the public comment and comments from the Committee, no additional notice prior to adopting these rules is required. The Board does not find it necessary to adopt a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA,HF2206) is applicable to these rules.

These amendments will become effective on March 22, 2006.

These amendments are intended to implement Iowa Code Supplement chapters 476B and 476C.

The following amendments are adopted.

ITEM 1. Adopt the following new rule:

**199—15.18(476B) Certification of eligibility for wind energy tax credits under Iowa Code chapter 476B.** Any person applying for certification of eligibility for state tax credits for wind energy pursuant to Iowa Code section 476B.5 as amended by 2005 Iowa Acts, chapter 179, section 166, is subject to this rule.

**15.18(1) Filing requirements.** Any person applying for certification of eligibility for wind energy tax credits must file with the board an application that contains substantially all of the following information:

a. Information regarding the applicant, including the legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address of the applicant.

b. Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner, and the percentage of equity interest held by each owner, and a statement that owners meeting the eligibility requirements of Iowa Code Supplement section 476B.5 are not owners of more than two eligible renewable energy facilities. In determining whether the two-facility limit is exceeded, the board will consider not only the legal entity that owns the utility, if other than a natu-

ral person, but the equity owners of the legal entity. If the owner of the facility is other than a natural person, information regarding the equity owners must be provided.

c. A description of the facility, including at a minimum the following information:

(1) Type of facility (that is, a qualified facility as defined in Iowa Code Supplement section 476B.1);

(2) Total nameplate generating capacity rating;

(3) A description of the location of the facility in Iowa, including an address or other geographic identifier;

(4) The date the facility is expected to be placed in service (that is, placed in service on or after July 1, 2005, but before July 1, 2008, for eligibility under Iowa Code chapter 476B as amended by 2005 Iowa Acts, chapter 179).

d. A copy of the executed power purchase agreement or other agreement to purchase electricity. If the power purchase agreement has not yet been finalized and executed, the board will accept as an other agreement an executed agreement signed by at least two parties that includes both a commitment to purchase electricity from the facility upon completion of the project and most of the essential elements of a contract.

e. A statement regarding the type of tax credit being sought; that is, indicating that the applicant is applying for tax credits pursuant to Iowa Code chapter 476B as amended by 2005 Iowa Acts, chapter 179 (1 cent per kWh, wind energy only tax credits).

**15.18(2) Review and notification.** Upon receipt of a complete application, the board will review it to make a preliminary determination regarding whether the facility is an eligible renewable energy facility. The board will notify the applicant by letter of the approval or denial of the application within 30 days of the date the application was filed. If the board fails to send the letter within 30 days, the application will be deemed denied. An applicant who receives a determination denying an application may file an appeal with the board within 30 days of the date of the denial, pursuant to the provisions of Iowa Code chapter 17A and Iowa Code Supplement section 476B.5. In the absence of a timely appeal, the preliminary determination shall be final.

**15.18(3) Incomplete application and additional information.** If an incomplete application is filed, the board may, upon request and for good cause shown, grant an extension of time to allow the applicant to provide additional information. Also, the board and its staff may request additional information at any time for purposes of determining initial or continuing eligibility for tax credits.

**15.18(4) Loss of eligibility status.** Within 18 months following board approval of eligibility, the applicant shall file information demonstrating that the eligible facility is operational and producing usable energy. If the board determines that the eligible facility was not operational within 18 months of board approval, the facility will lose eligibility status. However, the facility may reapply to the board for new eligibility.

**15.18(5) Allocation of capacity among eligible applicants.** Iowa Code Supplement section 476B.5 establishes the maximum amount of nameplate generating capacity of facilities eligible for the tax credits. In the event the board receives applications for tax credits that, in total, exceed the statutory limits, the board will rule on the applications in the order they are received, based upon the date of receipt. Because the board does not track the time of day that filings are made with the board, if the board receives more than one application on a particular date such that the combined capacity of the applications exceeds applicable statutory limits, the board will

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allocate the final eligibility determinations proportionally among all applications received on that date. Alternatively, the board may withhold this allocation unless a petition for allocation is filed with the board by one of the applicants who filed its application on that particular date. If such a petition is submitted, the board will notify all applicants who filed on that particular date, allowing each applicant to opt into the allocation within 45 days of the date of the filing of the petition. Applicants who opt in must comply with 199 IAC 15.18(4) after receiving eligibility under the allocation or lose their eligibility status. Applicants who do not opt in will maintain their original application date.

This rule is intended to implement Iowa Code Supplement chapter 476B.

ITEM 2. Adopt the following **new** rule:

**199—15.19(476C) Certification of eligibility for wind energy and renewable energy tax credits under Iowa Code chapter 476C.** Any person applying for certification of eligibility for state tax credits for wind energy or renewable energy pursuant to Iowa Code Supplement section 476C.3 is subject to this rule.

**15.19(1) Filing requirements.** Any person applying for certification of eligibility for wind energy or renewable energy tax credits must file with the board an application that contains substantially all of the following information:

a. Information regarding the applicant, including the legal name, address, telephone number, and (as applicable) facsimile transmission number and electronic mail address of the applicant.

b. Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner, and the percentage of equity interest held by each owner, and a statement that owners meeting the eligibility requirements of Iowa Code Supplement section 476C.1 are not owners of more than two eligible renewable energy facilities. The “legal status of each owner” refers to the ownership requirements of Iowa Code Supplement section 476C.1(6)“b,” which provides that an eligible renewable energy facility must be at least 51 percent owned by one or more or any combination of the following:

- (1) A resident of Iowa;
- (2) An authorized farm corporation, authorized limited liability company, or authorized trust, as defined in Iowa Code section 9H.1;
- (3) A family farm corporation, family farm limited liability company, or family farm trust, as defined in Iowa Code section 9H.1;
- (4) A revocable trust as defined in Iowa Code section 9H.1;
- (5) A testamentary trust as defined in Iowa Code section 9H.1;
- (6) A small business as defined in Iowa Code section 15.102;
- (7) An electric cooperative association organized pursuant to Iowa Code chapter 499 that sells electricity to end users located in Iowa or has one or more members organized pursuant to Iowa Code chapter 499;
- (8) A cooperative corporation organized pursuant to Iowa Code chapter 497 or a limited liability corporation organized pursuant to Iowa Code chapter 490A whose shares and membership are held by an entity that is not prohibited from owning agricultural land under Iowa Code chapter 9H; or

(9) A school district located in Iowa.

c. A description of the facility, including at a minimum the following information:

(1) Type of facility (that is, a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, or solar energy conversion facility, as defined in Iowa Code Supplement section 476C.1);

(2) Total nameplate generating capacity rating, plus maximum hourly output capability for any energy production capacity equivalent as defined in Iowa Code Supplement section 476C.1;

(3) A description of the location of the facility in Iowa, including an address or other geographic identifier;

(4) The date the facility is expected to be placed in service; that is, placed in service on or after July 1, 2005, but before January 1, 2011, for eligibility under Iowa Code Supplement chapter 476C; and

(5) For eligibility under Iowa Code Supplement chapter 476C, demonstration that the facility’s combined MW nameplate generating capacity and maximum hourly output capability of energy production capacity equivalent (as defined in Iowa Code Supplement section 476C.1(7)), divided by the number of separate owners meeting the requirements of Iowa Code Supplement chapter 476C, equals no more than 2.5 MW of capacity per eligible owner.

d. A copy of the power purchase agreement or other agreement to purchase electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose, which shall designate either the producer or the purchaser as eligible to apply for the renewable energy tax credit. If the power purchase agreement or other agreement has not yet been finalized and executed, the board will accept a binding statement from the applicant that designates which party will be eligible to apply for the renewable energy tax credit; that designation shall not be subject to change.

e. A statement regarding the type of tax credit being sought; that is, indicating that the applicant is applying for tax credits pursuant to Iowa Code Supplement chapter 476C (1.5 cents per kWh, wind and other renewable energy tax credits).

**15.19(2) Review and notification.** Upon receipt of a complete application, the board will review it to make a preliminary determination regarding whether the facility is an eligible renewable energy facility. The board will notify the applicant by letter of the approval or denial of the application within 30 days of the date the application was filed. If the board fails to send the letter within 30 days, the application will be deemed denied. An applicant who receives a determination denying an application may file an appeal with the board within 30 days of the date of the denial, pursuant to the provisions of Iowa Code chapter 17A and Iowa Code Supplement section 476C.3(2). In the absence of a timely appeal, the preliminary determination shall be final.

**15.19(3) Incomplete application and additional information.** If an incomplete application is filed, the board may, upon request and for good cause shown, grant an extension of time to allow the applicant to provide additional information. Also, the board and its staff may request additional information at any time for purposes of determining initial or continuing eligibility for tax credits.

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**15.19(4)** Loss of eligibility status. Within 18 months following board approval of eligibility, the applicant shall file information demonstrating that the eligible facility is operational and producing usable energy. If the board determines that the eligible facility was not operational within 18 months of board approval, the facility will lose eligibility status. However, the facility may reapply to the board for new eligibility.

**15.19(5)** Allocation of capacity among eligible applicants. Iowa Code Supplement section 476C.3(4) establishes the maximum amount of nameplate generating capacity of facilities eligible for the tax credits. In the event the board receives applications for tax credits that, in total, exceed the statutory limits, the board will rule on the applications in the order they are received, based upon the date of receipt. Because the board does not track the time of day that filings are made with the board, if the board receives more than one application on a particular date such that the combined capacity of the applications exceeds applicable statutory limits, the board will allocate the final eligibility determinations proportionally among all applications received on that date. Alternatively, the board may withhold this allocation unless a petition for allocation is filed with the board by one of the applicants who filed its application on that particular date. If such a petition is submitted, the board will notify all applicants who filed on that particular date, allowing each applicant to opt into the allocation within 45 days of the date of the filing of the petition. Applicants who opt in must comply with 199 IAC 15.19(4) after receiving eligibility under the allocation or lose their eligibility status. Applicants who do not opt in will maintain their original application date.

This rule is intended to implement Iowa Code Supplement chapter 476C.

[Filed 1/26/06, effective 3/22/06]

[Published 2/15/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/15/06.

**ARC 4909B**

## **WORKFORCE DEVELOPMENT DEPARTMENT[871]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby amends Chapter 23, "Employer's Contributions and Charges," Iowa Administrative Code.

New rule 871—23.32(96) is adopted as mandated by both federal law and 2005 Iowa Acts, House File 764, passed by the Iowa General Assembly.

The amendment to subparagraph 23.43(3)"b"(3) provides that overpayments during the processing of an appeal reversal of an allowance pursuant to Iowa Code section 96.6(2) will be waived and not charged to the employer's account.

The amendment to paragraph 23.82(1)"a" provides that employee-leasing companies providing construction workers will be classified as construction employers.

The amendment to the implementation clause of rule 871—23.82(96) corrects the citation to the Iowa Code.

Notice of Intended Action on these amendments was published in the December 21, 2005, Iowa Administrative Bulletin as **ARC 4746B**. A public hearing was held on January 10, 2006. No one attended the public hearing, and no comments about the amendments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective on March 22, 2006.

These amendments are intended to implement Iowa Code sections 96.6(2) and 96.7(2)"c"(2).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [23.32, 23.43(3)"b"(3), 23.82(1)"a," 23.82 impl. clause] is being omitted. These amendments are identical to those published under Notice as **ARC 4746B**, IAB 12/21/05.

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